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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1944

No. 42

M. CLAUDE SCREWS, FRANK EDWARD JONES
AND JIM BOB KELLY, PETITIONERS,

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 18, 1944.

CERTIORARI GRANTED APRIL 24, 1944.



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UNITED STATES OF AMERICA.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF GEORGIA—
ALBANY DIVISION.

No. 1300, Criminal.

M. CLAUD SCREWS; FRANK EDWARD JONES; JIM
BOB KELLEY,

Appellants,

versus

UNITED STATES OF AMERICA,

Appellee.

Appearances:

Mr. Clint W. Hager and Mr. J. F. Kemp, 505 Connally
Building, Atlanta, Georgia, and Mr. Robert B.
Short, Newton, Georgia, Attorneys for Appellants.

Mr. T. Hoyt Davis, United States Attorney, Macon,
Georgia, and Mr. G. Maynard Smith, Special Assist-
ant to the Attorney General of the United States,
Washington, D. C., Attorneys for Appellee.

APPEAL from the District Court of the United States for
the Middle District of Georgia, Albany Division, to
the United States Circuit Court of Appeals for the
Fifth Circuit, returnable at the City of New Orleans,
Louisiana.

United States District Court.

October Term, 1942.

United States of America,
Macon Division,
Middle District of Georgia.

The Grand Jurors of the United States, selected, chosen and sworn in and for the Middle District of Georgia, upon their oaths present:

Count One.

1. That on January 29, 1943, and at all times mentioned herein, M. Claud Screws was the duly elected Sheriff of Baker County, Georgia, and was acting in that capacity under and pursuant to the laws of the State of Georgia creating the office of sheriff and prescribing the duties thereof.

2. That on January 29, 1943, and at all times mentioned herein, Frank Edward Jones was employed by the City of Newton, Georgia, as a policeman and night patrolman, and was acting in that capacity under and pursuant to the laws of the State of Georgia and the ordinances and regulations of the municipality of Newton, Georgia, creating the office of police officer and prescribing the duties of said office.

3. That on the evening of January 29, 1943, and in the early hours of the morning of January 30, 1943, in Baker County, Georgia, in the Albany Division of the Middle District of Georgia, and within the jurisdiction of this Court, M. Claud Screws, Frank Edward Jones and Jim Bob Kelley, hereinafter referred to as the "defendants", did unlawfully, willfully and feloniously conspire, combine,

confederate and agree together and with each other to injure and oppress Robert Hall, a Negro citizen of the United States and an inhabitant of the State of Georgia, in the free exercise and enjoyment of rights, privileges and immunities secured to the said Robert Hall by the Constitution and laws of the United States, to-wit, the right to be secure in his person and to be immune from illegal assault and battery; the right and privilege not to be deprived of liberty and life without due process of law; the right and privilege not to be denied equal protection of the laws; the right and privilege not to be subjected to different punishments, pains and penalties by reason of his race and color than are prescribed for the punishment of other citizens; the right and privilege to be tried, upon the charge on which he had been arrested, by due process of law and if found guilty, to be sentenced and punished in accordance with the laws of the State of Georgia; all of said rights, privileges and immunities being secured to the said Robert Hall by the Fourteenth Amendment to the Constitution of the United States as against any person vested with and acting under the authority of the State of Georgia;

That it was the plan and purpose of said conspiracy that the said defendants would, and they did, on the evening of January 29, 1943, and in the early hours of the morning of January 30, 1943, arrest and cause to be arrested the said Robert Hall and that they would, and they did, bring and cause to be brought the said Robert Hall to the well in front of the Courthouse in said Newton, Georgia, and that then and there the defendants would, and they did, unlawfully and wrongfully assault, strike, and beat the said Robert Hall about the head with human fists and a blackjack causing injuries to the said Robert Hall which were the proximate and immediate cause of his death on the morning of January 30, 1943.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. (18 U. S. C. 51.)

Count Two.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

1. That on January 29, 1943, and in the early hours of the morning of January 30, 1943, in Baker County, Georgia, in the Albany Division of the Middle District of Georgia, and within the jurisdiction of this Court, M. Claud Screws, who was then and there the duly elected sheriff of Baker County, Georgia, acting under the laws of the State of Georgia, creating the office of sheriff and prescribing the duties thereof, and Frank Edward Jones, who was then and there a police officer employed by the municipality of Newton, Georgia, acting under the laws of the State of Georgia and the ordinances and regulations of the municipality of Newton, creating the office of police officer and prescribing the duties of such office, did willfully, unlawfully, and wrongfully, under color of the laws, statutes, ordinances, regulations and customs of the State of Georgia and of the County of Baker in said State and of the municipality of Newton in said County and State, creating the offices of Sheriff of Baker County, State of Georgia, and police officer of the municipality of Newton, Baker County, State of Georgia, subject and cause to be subjected Robert Hall, a Negro citizen and inhabitant of the State of Georgia and of the United States, to the deprivation of rights, privileges and immunities secured and protected to the said Robert Hall by the Constitution and laws of the United States, to-wit, the right to be secure in his person and to be immune from illegal assault and bat-

tery; the right and privilege not to be deprived of liberty and life without due process of law; the right and privilege not to be denied equal protection of the laws; the right and privilege not to be subjected to different punishments, pains and penalties, by reason of his race and color than are prescribed for the punishment of other citizens; the right and privilege to be tried, upon the charge on which he had been arrested, by due process of law and if found guilty, to be sentenced and punished in accordance with the laws of the State of Georgia; all of said rights, privileges and immunities being secured to the said Robert Hall by the Fourteenth Amendment to the Constitution of the United States as against any person vested with and acting under the authority of the State of Georgia; that is to say, that on the evening of January 29, 1943, and in the early hours of the morning of January 30, 1943, the defendants arrested and caused to be arrested the said Robert Hall, and brought and caused to be brought the said Robert Hall to the well in front of the Courthouse at Newton, Georgia, and then and there unlawfully and wrongfully did assault, strike and beat the said Robert Hall about the head with human fists and a blackjack causing injuries to the said Robert Hall which were the proximate and immediate cause of his death on the morning of January 30, 1943.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that at the time and place aforesaid, Jim Bob Kelley, well knowing all the premises aforesaid did, in the Albany Division of the Middle District of Georgia and within the jurisdiction of this Court, unlawfully, knowingly and willfully did and abet in the commission by Sheriff M. Claud Screws and Night Patrolman Frank Edward Jones of the offense described in this count.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. -(18 U. S. C. 52; 18 U. S. C. 550.)

Count Three:

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

1. That all of the allegations contained in paragraphs 1 and 2 of Count One of this indictment are here incorporated by reference as though fully set out;

2. That on the evening of January 29, 1943, and in the early hours of the morning of January 30, 1943, in Baker County, Georgia, in the Albany Division of the Middle District of Georgia, and within the jurisdiction of this Court, M. Claud Screws, Frank Edward Jones and Jim Bob Kelley, hereinafter referred to as the "defendants", did unlawfully, wilfully and feloniously combine, conspire, confederate and agree together and with each other to commit an offense against the United States of America, to-wit, to violate Title 18, Section 52, United States Code, that is to say, during the period set forth above, the said defendants did combine, conspire, confederate and agree together and with each other, that they would, under color of the laws, statutes, ordinances, regulations and customs of the State of Georgia and of the County of Baker in said State and of the municipality of Newton in said County and State, creating the offices of sheriff of Baker County, State of Georgia, and police officer of the municipality of Newton, Baker County, State of Georgia, willfully subject and cause to be subjected Robert Hall, a Negro citizen and inhabitant of the State of Georgia and of the United States, to the deprivation of rights, privileges

and immunities secured and protected to the said Robert Hall by the Constitution and laws of the United States, to-wit, the right to be secure in his person and to be immune from illegal assault and battery; the right and privilege not to be deprived of liberty and life without due process of law; the right and privilege not to be denied equal protection of the laws; the right and privilege not to be subjected to different punishments, pains and penalties by reason of his race and color than are prescribed for the punishment of other citizens; the right and privilege to be tried upon the charge on which he had been arrested, by due process of law and if found guilty, to be sentenced and punished in accordance with the laws of the State of Georgia; all of said rights, privileges and immunities being secured to the said Robert Hall by the Fourteenth Amendment to the Constitution of the United States as against any person vested with and acting under the authority of the State of Georgia;

That it was the plan and purpose of said conspiracy that the said defendants would, and they did, on the evening of January 29, 1943, and in the early hours of the morning of January 30, 1943, arrest and cause to be arrested the said Robert Hall, and that they would, and they did, bring and cause to be brought the said Robert Hall to the well in front of the Courthouse in said Newton, Georgia, and that then and there the defendants would, and they did, unlawfully and wrongfully assault, strike and beat the said Robert Hall about the head with human fists and a blackjack, causing injuries to the said Robert Hall which were the proximate and immediate cause of his death on the morning of January 30, 1943.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That the defendants, to effect the objects of the conspiracy and in furtherance thereof, did at the several times hereinafter mentioned, knowingly, willfully and feloniously commit certain overt acts including the following:

Overt Acts.

1. That on the evening of January 29, 1943, the defendants Frank Edward Jones and Jim Bob Kelley, at the request of the defendant M. Claud Screws, drove to the home of the said Robert Hall near Newton, Georgia, in an automobile belonging to the defendant M. Claud Screws.

2. That on the evening of January 29, 1943, the defendants Frank Edward Jones and Jim Bob Kelley arrested the said Robert Hall at his home near Newton, Georgia, handcuffed the said Robert Hall and placed him so handcuffed in the rear seat of the automobile belonging to the defendant Mr. Claud Screws.

3. That on the evening of January 29, 1943, and in the early hours of the morning of January 30, 1943, the defendants Frank Edward Jones and Jim Bob Kelley drove the said Robert Hall, so handcuffed, from his home near Newton, Georgia, to the well in front of the Court-house in Newton, Georgia, in the automobile belonging to the defendant M. Claud Screws.

4. That on the evening of January 29, 1943, and in the early hours of the morning of January 30, 1943, the defendants M. Claud Screws, Frank Edward Jones and Jim Bob Kelley, at and near the well in front of the Court-house in Newton, Georgia, unlawfully and wrongfully did assault, beat and strike the said Robert Hall about the

head with human fists and a blackjack, felling the said Robert Hall to the ground while still handcuffed, and continued to beat, strike and assault the said Robert Hall as aforesaid after he had been felled to the ground.

5. That on the evening of January 29, 1943, and in the early hours of the morning of January 30, 1943, the defendants Frank Edward Jones and Jim Bob Kelley dragged the unconscious body of the said Robert Hall from the well in front of the Courthouse at Newton, Georgia, up the concrete walkway, through the Courthouse into the jail in back of said Courthouse at Newton, Georgia, and left the said Robert Hall lying unconscious on the floor of said Jail.

6. That in the early hours of the morning of January 30, 1943, the defendant Frank Edward Jones entered the jail at Newton, Georgia, and removed from the unconscious body of the said Robert Hall the handcuffs with which he had been fettered from the time he was placed in the car belonging to the defendant M. Claud Screws as aforesaid.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. (18 U. S. C. 88.)

ROY I. NEAL,

Foreman of the Grand Jury.

JOHN P. COWART,

Assistant United States Attorney.

United States District Court, Middle District of Georgia,
Macon Division.

The United States of America

vs.

No. 1300.

M. Claud Screws; Frank Edward Jones; Jim Bob Kelley.

Indictment.

Violation: 18 U. S. C. A., 51 and 52.

A true bill:

ROY I. NEAL, Foreman.

Filed in open Court this 10 day of April, A.D. 1943.

GEO. F. WHITE, Clerk.

Bail, \$7500.00 each.

PLEA.

The defendants, M. Claud Screws, Frank Edward Jones and Jim Bob Kelley waives arraignment and pleads not guilty this 4 day of Oct., 1943.

CLINT W. HAGER,

FRANK KEMP &

ROBT. B. SHORT,

Attys. for Defts.

VERDICT.

We, the jury, find the defendants, Guilty on Counts 2 & 3, this Oct. 7, 1943.

J. B. JENKINS, Foreman.

JUDGMENT AND COMMITMENT.

District Court of the United States, Middle-Georgia District, Albany Division.

United States

vs.

M. Claud Screws.

No. 1300 Criminal Indictment in Three Counts for Violation of U. S. C. Title 18, Secs. 51 and 52.

On this 4th day of October, 1943, came the United States Attorney, and the defendant, M. Claud Screws appearing in proper person, and by counsel, and,

The defendant having been convicted on verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to-wit, Counts Two and Three—Wilfully, unlawfully and wrongfully, under color of the laws, statutes, ordinances and regulations of the State of Georgia, County of Baker, subjected one Robert Hall, a negro citizen of the State of Georgia and of the United States, to the deprivation of rights, privileges, and immunities secured to said Robert Hall by the constitution and laws of the United States; unlawfully conspired with others to subject said Robert Hall to the deprivation of said rights, privileges and immunities—and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court. It Is By The Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of

One (1) Year and fine of One Thousand (\$1,000.00) Dollars on Count Two; Two (2) Years on Count Three; service of said sentences of One and Two Years to run consecutively—or until said defendant is otherwise discharged as provided by law.

Note: Plea of not guilty entered on October 4, 1943; verdict of guilty on Counts Two and Three returned on October 7, 1943; sentence pronounced on October 7, 1943.

It is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

At Albany, Georgia, this October 7, 1943.

(Signed) BASCOM S. DEEVER,

United States District Judge.

JUDGMENT AND COMMITMENT.

District Court of the United States, Middle-Georgia District, Albany Division.

United States

vs.

Frank Edward Jones.

No. 1300 Criminal Indictment in Three Counts for Violation of U. S. C. Title 18, Secs. 51 and 52.

On this 4th day of October, 1943, came the United States Attorney, and the defendant, Frank Edward Jones appearing in proper person; and by counsel, and,

The defendant having been convicted on verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to-wit, Counts Two and Three—Wilfully, unlawfully and wrongfully, under color of the laws, statutes, ordinances and regulations of the State of Georgia, County of Baker, and municipality of Newton, subjected one Robert Hall, a negro citizen of the State of Georgia and of the United States, to the deprivation of rights, privileges, and immunities secured to said Robert Hall by the constitution and laws of the United States; unlawfully conspired with others to subject said Robert Hall to the deprivation of said rights, privileges and immunities—and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is By The Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of

One (1) Year and fine of One Thousand (\$1,000.00) Dollars on Count Two; Two (2) Years on Count Three; service of said sentences of One and Two Years to run consecutively—or until said defendant is otherwise discharged as provided by law:

Note: Plea of not guilty entered on October 4, 1943; verdict of guilty on Counts Two and Three returned on October 7, 1943; sentence pronounced on October 7, 1943:

It is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United

States Marshal or other qualified officer and that the same shall serve as the commitment herein.

At Albany, Georgia, this October 7, 1943.

(Signed) BASCOM S. DEEVER,
United States District Judge.

JUDGMENT AND COMMITMENT.

District Court of the United States, Middle-Georgia District, Albany Division.

United States

vs.

Jim Bob Kelley.

No. 1300 Criminal Indictment in Three Counts for Violation of U. S. C. Title 18, Secs. 51 and 52.

On this 4th day of October, 1943, came the United States Attorney, and the defendant, Jim Bob Kelley appearing in proper person, and by counsel, and:

The defendant having been convicted on verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to-wit, Counts Two and Three—unlawfully, knowingly and wilfully aided and abetted others in subjecting one Robert Hall, a negro citizen of the State of Georgia and of the United States, to the deprivation of rights, privileges, and immunities secured to said Robert Hall by the constitution and laws of the United States while acting under color of the laws, statutes, ordinances and regulations of the State of Georgia, County of Baker and municipality of Newton; unlawfully conspired with others to subject said Robert Hall to the de-

privation of said privileges and immunities--and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is By The Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of

One (1) Year and fine of One Thousand (\$1,000.00) Dollars on Count Two; Two (2) Years on Count Three; service of said sentences of One and Two Years to run consecutively--or until said defendant is otherwise discharged as provided by law.

Note: Plea of not guilty entered on October 4, 1943; verdict of guilty on Counts Two and Three returned on October 7, 1943; sentence pronounced on October 7, 1943.

It is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

At Albany, Georgia, this October 7, 1943.

(Signed) BASCOM S. DEAVER,

United States District Judge.

18

DEMURRER.

(Title Omitted.)

Now come the defendants, M. Claud Screws, Frank Edward Jones and Jim Bob Kelley, and before issue is joined

in the above stated case and before being put in jeopardy, and demur jointly and severally to the indictment in this cause and move to quash same, upon the following grounds, to-wit:

1.

Because the matters and things set forth and charged in the several counts, 1 to 3 inclusive, do not constitute offenses against the laws of the United States and do not come within the purview, true intent, and meaning of any statute or of any law of the United States.

2.

Because the matters and things in said indictment, set forth and charged, do not constitute offenses cognizable in the United States District Court and do not come within the jurisdiction of said Court or of any Court of the United States.

3.

Because this Court has no jurisdiction over the alleged crimes charged in said indictment.

4.

Because no crime against the laws of the United States nor any offense against the United States nor any offense against the laws of the United States is charged in said indictment against these defendants or either of them.

5.

Because the indictment does not show facts sufficient to being the same within the provisions of any statute or of

any law of the United States nor within the provisions of any offense against the United States.

6.

Because the indictment as a whole alleges no facts nor acts which would constitute a violation of the statutes of the United States nor any offense against the laws thereof.

7.

Because said indictment and each count thereof are too vague, general, insufficient and uncertain to afford the accused proper notice to plead and prepare their defenses and are too vague, general, insufficient and uncertain to set forth any specific offense or offenses under the laws of the United States.

Count 1.

1.

Because the matters and things set forth and charged in count 1 of said indictment do not constitute an offense against the laws of the United States and do not come within the purview, true intent and meaning of the Act of Congress approved March 4, 1909 (18 U. S. C. A. 51).

2.

Because the matters and things set forth and charged in count 1 of said indictment are judicially cognizable by the State Courts of Georgia and not by the United States District Courts or by any other Court of the United States.

18.

3.

Because the matters and things set forth and charged in count 1 of said indictment do not constitute an offense cognizable in the United States District Court and do not come within the jurisdiction of said Court not of any other Court in the United States.

4.

Because said count of said indictment does not show nor specify any right, privilege or immunity secured or protected by the Constitution or by the laws of the United States but refers solely to rights, privileges and immunities within the power of the States and reserved to the States.

5.

Because said count of said indictment specifies no violation of any right or of any privilege or of any immunity secured or protected by the Constitution or by the laws of the United States but refers only to specific rights, privileges and immunities protected by the Constitution and laws of the State of Georgia and reserved by the United States Constitution to the sole jurisdiction of said state.

6.

Because said count in said indictment does not show facts sufficient to advise the defendants of the specific charges which said defendants must defend against.

7.

Because said count 1 does not set forth specifically and with particularity what rights, what privileges or what immunities it is claimed were secured to the said Robert Hall as a citizen of the United States by the Constitution and laws of the United States and which it is claimed have been violated by the defendants.

8.

Because the gist of the alleged conspiracy is not charged with precision and certainty and the ingredients of said alleged conspiracy are not clearly stated nor charged.

9.

Because this Court has no jurisdiction of the alleged crime charged in said count.

Count 2.

1.

Because the matters and things set forth and charged in count 2 of said indictment do not constitute an offense against the laws of the United States and do not come within the purview, true intent and meaning of the Act of Congress approved March 4, 1909 (18 U. S. C. A. 52).

2.

Because the matters and things set forth and charged in count 2 of said indictment are judicially cognizable by the State Courts of Georgia and not by the United States District Courts or by any other Court of the United States.

3.

Because the matters and things set forth and charged in count 2 of said indictment do not constitute an offense cognizable in the United States District Court and do not come within the jurisdiction of said Court nor of any other Court in the United States.

4.

Because said count of said indictment does not show nor specify any right, privilege or immunity secured or protected by the Constitution or by the laws of the United States but refers solely to rights, privileges and immunities within the power of the States and reserved to the States.

5.

Because said count of said indictment specifies no violation of any right or of any privilege or of any immunity secured or protected by the Constitution or by the laws of the United States but refers only to specific rights, privileges and immunities protected by the Constitution and laws of the State of Georgia and reserved by the United States Constitution to the sole jurisdiction of said State.

6.

Because said count of said indictment does not show facts sufficient to advise the defendants of the specific charges which said defendants must defend against.

7.

Because said count 2 does not set forth specifically and with particularity what rights, what privileges or what

immunities it is claimed were secured to the said Robert Hall as a citizen of the United States by the Constitution and laws of the United States and which it is claimed have been violated by the defendants.

8.

Because it is not alleged specifically and with particularity in said count 2/ under what law, under what statute, under what ordinance or under what regulations the defendants are claimed to have acted in committing the alleged offense.

9.

Because this Court has no jurisdiction of the alleged crime charged in said count.

Count 3.

1.

Because the matters and things set forth and charged in count 3 of said indictment do not constitute an offense against the laws of the United States and do not come within the purview, true intent and meaning of the Act of Congress approved March 4, 1909 (18 U. S. C. A. 52).

2.

Because the matters and things set forth and charged in count 3 of said indictment are judicially cognizable by the State Courts of Georgia and not by the United States District Courts or by any other Court of the United States.

3.

Because the matters and things set forth and charged in count 3 of said indictment do not constitute an offense cognizable in the United States District Court and do not come within the jurisdiction of said Court nor of any other Court in the United States.

4.

Because said count of said indictment does not specify any right, privilege or immunity secured or protected by the Constitution or by the laws of the United States but refers solely to rights, privileges and immunities within the power of the States and reserved to the States.

5.

Because said count of said indictment specifies no violation of any right or of any privilege or of any immunity secured or protected by the Constitution or by the laws of the United States but refers only to specific rights, privileges and immunities protected by the constitution and laws of the State of Georgia and reserved by the United States Constitution to the sole jurisdiction of said State.

6.

Because no crime against the laws of the United States nor any offense against the United States nor any offense against the laws of the United States is charged in said count of said indictment against these defendants or either of them.

23

7.

Because said count in said indictment does not allege facts sufficient to advise the defendants of the specific charges which said defendants must defend against.

8.

Because said count 3 does not set forth specifically and with particularity what rights, what privileges or what immunities it is claimed were secured to the said Robert Hall as a citizen of the United States by the Constitution and by the laws of the United States and which it is claimed have been violated by the defendants.

9.

Because the gist of the alleged conspiracy is not charged with precision and certainty and the ingredients of said alleged conspiracy are not clearly stated nor charged.

10.

Because said count of said indictment does not show facts sufficient to bring the same within the provision of any statute of the United States nor within the provision of any offense against the United States.

11.

Because said count of said indictment in alleging a conspiracy to violate Sec. 52 of Title 19, U. S. C. A. does not allege nor specify any violation of the Constitution or of the laws of the United States and does not state any offense against such laws.

Because this Court has no jurisdiction of the alleged crime charged in said count.

Wherefore, defendants pray that this their demurrers be sustained and that said indictment and each count thereof be quashed.

CLINT W. HAGER,

J. F. KEMP,

R. B. SHORT,

Attorneys for Defendants.

Filed at 4:00 P. M. July 12, 1943.

**ORDER SUSTAINING DEMURRER TO COUNT I AND
OVERRULING IT AS TO COUNTS II AND III.**

The motion to dismiss the indictment was argued by counsel for both sides orally and by brief. The motion is hereby sustained as to Count 1 and said Count is hereby dismissed and quashed. The motion is overruled as to Counts 2 and 3.

This August 30, 1943.

BASCOM S. DEEVER,

Judge.

Filed at 2:30 P. M. Aug. 30, 1943.

NOTICE OF APPEAL AND GROUNDS OF APPEAL.

In the District Court of the United States for the Middle
District of Georgia, Albany Division.

United States of America,

vs.

Crim. No. 1300.

M. Claud Screws, Frank Edward Jones and Jim Bob Kelley.

Name and Address of Appellants:

M. Claud Screws, Frank Edward Jones and Jim Bob
Kelley, all of Newton, Georgia.

Names and Addresses of Appellants' Attorneys:

Robert B. Short, Newton, Georgia, J. F. Kemp and Clint
W. Hager, 505 Connally Building, Atlanta, Georgia.

Offense:

Appellants were indicted at the October Term, 1942, by
a United States Grand Jury at Macon, Georgia, and
charged in the first count of violating Title 18, Section
51 U. S. C. A. which is for an alleged violation of the so-
called Civil Liberties Act. The second count was brought
under the provisions of Title 18, Section 52 which is for an
alleged violation of the so-called Civil Liberties Act. The
third count of the indictment was for a conspiracy to
violate the so-called Civil Liberties Act. Upon demurrer
the Court struck count 1 and defendants went to trial
upon counts 2 and 3.

Date of Judgment:

Appellants went to trial on October 4, 1943, and a ver-
dict was returned on October 7, 1943, finding appellants
guilty on counts 2 and 3 of the indictment and thereupon
and on said date of October 7, 1943, the Court pronounced
judgment.

Brief Description of Judgment or Sentence:

The Court imposed sentence of a year upon each of the appellants on count 2 of the indictment and a fine of \$1000.00 as to each of said defendants; upon the third count of said indictment the Court imposed a sentence of two years upon each of said defendants to run consecutively with the sentence imposed upon count 2.

Name of Prison where now Confined, if not on Bail:

Counsel for appellants notified the Court orally that an appeal would be taken within the time prescribed by law from the judgment and sentences imposed and requested that the Court permit appellants to be enlarged upon bail pending appeal. The Court refused to permit appellants or either of them to be enlarged upon bail and instructed the United States Marshal to convey them to the county jail of Mitchell County at Camilla, Georgia, where they are now confined.

We, the above named appellants hereby appeal to the United States Circuit Court of Appeals for the Fifth Judicial Circuit from the judgments above mentioned on the grounds set forth below and hereinafter:

**M. CLAUD SCREWS,
FRANK EDWARD JONES,
JIM BOB KELLEY,**
Appellants.

Dated October 8, 1943.

Grounds of Appeal.

The grounds of appeal upon which appellants rely for a reversal of the judgment entered against them as set out in the notice of appeal are as follows:

1.

That the Court erred in refusing to sustain the demurrers filed by appellants to counts 2 and 3 of the indictment upon each every ground set forth in said demurrer.

2.

That the Court erred in overruling appellants demurrer to counts 2 and 3 of said indictment.

3.

That the Court erred in overruling the motion made by appellants for a directed verdict upon both counts of said indictment at the conclusion of all the evidence introduced by the Government and at the time it rested its case.

4.

That the Court erred in overruling the motion made by appellants for a directed verdict at the conclusion of all the evidence introduced by both the Government and appellants.

5.

That the Court erred in refusing to direct a verdict on behalf of appellants at the conclusion of all the evidence upon the ground that there was a fatal variance between the allegations of the indictment and the proof introduced in the case.

6.

That the Court erred upon its ruling in the admission and exclusion of evidence as will more fully appear in

the assignment of errors which will be prepared when attorneys for appellants can secure a transcript of the written record.

I, Clint W. Hager, certify that I am attorney of record for appellants and that I have this day served Hon. T. Hoyt Davis, United States Attorney for the Middle District of Georgia with a copy of the foregoing notice of appeal and grounds therefor by mailing a copy of the same to him to his official office and place of business in the United States Post Office Building at Macon, Georgia.

This the 8th day of October, 1943.

CLINT W. HAGER,

Attorney of Record for Appellants.

Filed October 9 1943.

30

BOND.

Know All Men By These Presents, that we, M. C. Screws as principal, and R. L. Hall, as sureties, are held and firmly bound unto United States of America in the full and just sum of Two Hundred Fifty (\$250.00) Dollars to be paid to the said Obligee to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this . . . day of October, in the year of our Lord One Thousand Nine Hundred and Forty Three.

Whereas, lately at a term of the United States District Court for the Middle District of Georgia, in the Albany

Division in a suit depending in said Court, between United States of America and M. C. Screws a judgment was rendered against the said M. C. Screws and the said M. C. Screws having given notice of appeal and filed a copy thereof in the Clerk's office of the said Court to reverse the judgment in the aforesaid suit, and a copy of the said Notice of Appeal having been served upon the United States Attorney citing and admonishing him to be and appear before the United States Court of Appeals for the Fifth Circuit, to be holden at New Orleans, Louisiana, within 30 days from the date thereof.

Now, the Condition of the Above Obligation is such, that if the said M. C. Screws shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

M. C. SCREWS, (Seal)
R. L. HALL. (Seal)

Sealed, and delivered in presence of—

JOHN M. MAPLES,
ROBERT CULPEPPER, JR.,
U. S. Commissioner.

(U. S. Commissioner's Impression Seal Attached.)

Approved by—

United States of America,
Middle District of Georgia.

R. L. Hall, security on the within bond being duly sworn, deposes and says that he is worth the sum of \$25,000.00 over and above his just debts and liabilities and exemptions under the homestead and exemption laws of the State of Georgia.

R. L. HALL.

Sworn to and subscribed before me this 9th day of
Oct., 1943.

DAVID C. CAMPBELL, JR.,
Dep. Clk., U. S. Dist. Court.

(On Back of Bond.)

No. 1300—United States of America, vs.: Bond M. Claud
Screws, Filed at 4:45 P. M. Oct. 9, 1943.

DAVID C. CAMPBELL, JR.,
Dep. Clerk, U. S. District
Court.

32

BOND.

Know All Men By These Presents, that we, Frank Edward Jones, as principal, and R. L. Hall, as sureties, are held and firmly bound unto United States of America in the full and just sum of Two Hundred Fifty (\$250.00) Dollars to be paid to the said Obligee to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this . . . day of October, in the year of our Lord one thousand nine hundred and forty three.

Whereas, lately at a term of the United States District Court for the Middle District of Georgia, in the Albany Division in a suit depending in said Court, between United States of America and Frank Edward Jones a judgment was rendered against the said Frank Edward Jones and the said Frank Edward Jones having given notice of appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a copy of the said Notice of Appeal having been served

upon the United States Attorney citing and admonishing him to be and appear before the United States Court of Appeals for the Fifth Circuit, to be holden at New Orleans, Louisiana, within 30 days from the date thereof.

Now, the Condition of the above Obligation is such, that if the said Frank Edward Jones shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

FRANK EDWARD JONES, (Seal)
R. L. HALL. (Seal)

Sealed and delivered in presence of—

JOHN M. MAPLES,

ROBERT CULPEPPER, JR.,

U. S. Commissioner.

(Comrs. Imprsn. Seal Attached.)

Approved by—

United States of America,
Middle District of Georgia.

R. L. Hall, security on the within bond, being duly sworn, deposes and says that he is worth the sum of \$25,000.00 over and above his just debts and liabilities and exemptions under the homestead and exemption laws of the State of Georgia.

R. L. HALL.

Sworn to and subscribed before me this 9th day of Oct., 1943.

DAVID C. CAMPBELL, JR.,
Dep. Clk. U. S. Dist. Court.

(On Back of Bond.)

No. 1300. United States of America, vs. Bond, Frank Edward Jones—Filed at 4:45 P. M. Oct. 9, 1943.

DAVID C. CAMPBELL, JR.,

Dep. Clerk, U. S. District Court.

34

BOND.

Know All Men By These Presents, that we, Jim Bob Kelley, as principal, and R. L. Hall, as sureties, are held and firmly bound unto United States of America in the full and just sum of Two Hundred Fifty (\$250.00) Dollars, to be paid to the said Obligee, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this . . . day of October, in the year of our Lord one thousand nine hundred and forty Three.

Whereas, lately at a term of the United States District Court for the Middle District of Georgia, in the Albany Division in a suit depending in said Court, between United States of America and Jim Bob Kelley a judgment was rendered against the said Jim Bob Kelley and the said Jim Bob Kelley having given notice of appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a copy of the said Notice of Appeal having been served upon the United States Attorney citing and admonishing him to be and appear before the United States Court of Appeals for the Fifth Circuit, to be holden at New Orleans, Louisiana, within 30 days from the date thereof.

Now, the Condition of the above Obligation is such, that if the said Jim Bob Kelley shall prosecute his appeal to

effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

JIM BOB KELLEY, (Seal)

R. L. HALL. (Seal)

Sealed and delivered in presence of—

JOHN M. MAPLES,

ROBERT CULPEPPER, JR.,

U. S. Commissioner.

(U. S. Commissioner's Impression Seal attached.)

Approved by:

United States of America,
Middle District of Georgia.

R. L. Hall, security on the within bond, being duly sworn, deposes and says that he is worth the sum of \$25,000.00 over and above his just debts and liabilities and exemptions under the homestead and exemption laws of the State of Georgia.

R. L. HALL.

Sworn to and subscribed before me this 9th day of Oct., 1943.

DAVID C. CAMPBELL, JR.,

Dep. Clk U. S. Dist. Court.

(On Back of Bond.)

No. 1300. United States of America, vs. Bond, Jim Bob Kelley. Filed at 4:45 P. M. Oct. 9, 1943.

DAVID C. CAMPBELL, JR.,

Dep. Clerk U. S. District Court.

BILL OF EXCEPTIONS.

(Title Omitted.)

Be It Remembered, that on the 13th day of August, 1943, at the April Term, 1943, of said Court, before Honorable Bascom S. Deaver, United States Judge, the demurrers of the defendants to the indictment came on for hearing.

At said time and place and before said Judge, the following proceedings were had as hereinafter set forth:

Hearing before Honorable Bascom S. Deaver, United States Judge, without a jury, on August 13, 1943.

Appearances.

For the Prosecution:

Honorable T. Hoyt Davis, United States Attorney, and Honorable G. Maynard Smith, Special Assistant to the Attorney General of the United States.

For the Defendants:

Mr. Clint W. Hager and Mr. J. F. Kemp, 505 Connally Building, Atlanta, Georgia,
Mr. Robert B. Short, Newton, Georgia.

DEFENDANTS' DEMURRERS TO INDICTMENT.

After hearing argument of counsel and citation of authorities, the Court took said matter under consideration and on the 30th day of August, 1943, the Court sustained defendants' demurrers to count 1 of the indictment and dismissed said count, and at the same time the Court entered an order overruling defendants' demurrers to Counts II and III of the indictment and refused to quash said

counts II and III of said indictment. The defendants through their attorneys reserved an exception to said ruling which exception was duly noted and allowed by the Court.

Be It Further Remembered, that on the 4th day of October, 1943, at the October Term, 1943, of said Court, before Honorable Bascom S. Deaver, United States Judge, and a jury, the above stated case came on for trial. Defendants M. Claud Screws, Frank Edward Jones and Jim Bob Kelley were present and were on trial at said time and place, and before said Judge the following proceedings were had as hereinafter set forth:

Trial before Honorable Bascom S. Deaver, United States Judge, and a jury, on October 4, 1943.

Appearances.

For the Prosecution:

Honorable T. Hoyt Davis, United States Attorney, and Honorable G. Maynard Smith, Special Assistant to the Attorney General of the United States.

For the Defendants:

Mr. Clint W. Hager and Mr. J. F. Kemp, 505 Connally Building, Atlanta, Georgia,
Mr. Robert B. Short, Newton, Georgia.

At said trial the following witnesses were sworn and testified as hereinafter set forth:

39 WILL HALL (Col.), first witness sworn in behalf of the Government, testified on

Direct Examination.

My name is Will Hall. I am the father of Robert Hall, who was also called Bobby. I live out there about a mile

and a half below Newton, just a mile and a half below Newton, in Baker County. I was born and raised in that county. I have been living there just about six years. I have been living in Baker County all my life. I farm. I own my farm.

My son Bobby Hall or Robert was about 30 or 31 years old. I know Mr. M. Claud Screws and I know what office he holds in Baker County.

Stipulation.

Mr. Davis:

If Your Honor please, I would like to state that counsel agree and stipulate at this time that the defendant, M. Claud Screws, was at the time in question here and since and some years prior thereto, was and is the Sheriff of Baker County, Georgia; and that the defendant, Frank Edward Jones, was at the time in question here employed as a city policeman or night watchman by the Town of Newton.

(Direct Examination continued.)

I have been knowing Mr. Claud Screws ever since we were boys like.

Along in December I had occasion to go to see Sheriff Screws about a pistol. It was something like about the last day of December.

Q. Well, just relate to the jury why you went and what was the object of it and what the Sheriff said, if anything?

A. My boy come to me—

Q. Now, when you say "my boy", suppose you name him?

A. Yes, sir, Bobby Hall, he come to me in the house where I was one morning, where I was setting at the breakfast table, and was telling me that Mr. Frank Jones— And he said that "Mr. Frank Jones took my pistol last night, papa", said Mr. Claud told him to take my pistol" and he said "I wouldn't care if you axed him to give it back to me, please sir", said "I didn't carry it for no meanness at all but he said I be out mechanicing at night"—

My boy asked me to see the Sheriff and see if I could get the pistol back and I went to see Mr. Screws, and I ax'ed him would he mind giving him back the pistol, that he wouldn't do any harm with it and would he mind giving it back to me. He told me he would see me about it a day or two later and tell me. This was the next morning after the pistol had been taken from him. That was all that was said at that time between me and the Sheriff.

I went back to see the sheriff again about it, about three or four days later. On that occasion he told me to see the Judge and if the Judge would give me a trip back to him, he would give it to me. I did not go back to him any further. I let it alone, I did not get the pistol. I know what kind of pistol it was. It was an automatic blue steel with pearl handle.

So, after my two visits to the Sheriff in an effort to get the pistol, I abandoned the idea and let it alone. There was no case made against Bobby that I knows of for having the pistol. I didn't hear of any. He carried the pistol in that little drawer on the dash.

I recall the night that my boy was killed, the night of January 29, 1943. On that night I was home. I went off the first part of the night and didn't get back until late. I got back about eleven o'clock and I sot up there by the fire a few minutes and I went to bed and I heard

a car. I said I heard a car come up there to his house, to Bobby's house. Bobby lived about 100 yards from me. Bobby was married. I just see'd the lights of the car coming in through my glass windows. The car stopped up at his house. I stayed there just about ten minutes. It came back by my house, come back out and hit the road.

After the car left Bobby's wife, Annie Pearl, came to my house. The next morning Annie Pearl and I went to Newton to give bond for Bobby, just before sun-up. We went downtown there and went around to the jail. I didn't see nothing of the Sheriff there. I saw somebory in jail. I remember who I saw there. I saw Mr. Edgar Bailey and his wife and Mr. Hoke Edwards and his wife. My boy was not in jail. I found out where my boy was and we come to Albany.

Before leaving Newton there I went around the public square, about the well and around town. That was after I had talked to some people in Newton, after I had talked to the people in jail that I named—no, it was before I had talked to them, beforehand. I just see'd a puddle of blood there on the square and one of my boy's shoes. I saw some other scraps of clothing, see'd what looked like might have been a piece off of his undershirt. Looked like it was in two halves. The piece of undershirt was laying off in that direction from the blood and the shoe was just inside of the gate from the blood, one shoe. The pool of blood was a little bigger around than that table. I saw evidence on the ground and grass there where it had been disturbed. I could see a lot of tracks around there. I went up toward the Court-house, went up the walk. On the walk going toward the Court-house I seen a little stream of blood from there clean on through to the jail. That extended all the way from the well. The stream of blood started from that puddle of blood and went straight on to the jail and went through the Court-house. There were

no other indications of a struggle there no more than the blood and the tracks.

I was in Newton, I reckon, about three-quarters of an hour and then I went back home. I was advised in Newton what had happened to my boy. I was told that the boy was in Albany in the hospital. I talked to Mr. George C. Durham a little and Mr. John and Mr. Joe White. I talked to Mr. George Durham because I wanted to know if he had sworn out a warrant for Bobby Hall. Mr. George Durham is a fellow that stayed there in Newton. I was trying to find out what had he committed and the reason he was arrested.

Bobby's wife was with me all the while up there in Newton. When we left Newton, we went back home and she went back with me. Then I come to Albany. When I got to Albany I went to the undertaker, Walter Rotcat. I found my boy there. He was dead. It was about nine o'clock in the morning when I got there. The undertaker had not embalmed him when I got there. He had not washed him. He looked like he was bloodied up pretty bad in the head and on his body. His body from the pants up looked like he was raw-like. I stayed there until about 12:00 or 1:00 o'clock. Bobby had on his pants. I don't know whether he had them on or whether they were just laying over him. Bobby's wife was along all the while.

Mr. George Durham, I think, farms around there and Mr. John C. runs a store, runs a market.

Cross Examination.

I lived down in Miller County about ten years. I was born and raised in Baker County. I did move to Miller County.

I had a conversation with both Mr. George Durham and Mr. John C. Durham, the man that runs the market there, that same morning.

Re-Direct Examination.

I talked to Mr. George C. first. I met Mr. John C. last and I talked to him because I thought maybe Bobby's wife might have made a mistake in the Durhams.

43 MR. E. M. ELLIS, JR., 2nd witness sworn in
behalf of Government, testified on

Direct Examination.

My name is E. M. Ellis, Jr. I live in Newton. I do not do anything. I am disabled. I have lived right in Newton about four years.

I was a member of the Baker County grand-jury in January of this year, of Baker Superior Court. I know Bobby Hall or Robert Hall. He appeared before the grand-jury there. His complaint was that he had lost a pistol and he came before the grand-jury to see if they could do anything about it or get it for him. He said Frank Jones had taken the pistol from him. He was undertaking to enlist the aid of the grand-jury in recovering his pistol. I think the grand-jury was advised as to who had the pistol. Bobby Hall advised them as to who had it. He said that he understood that Frank, I mean that Mr. Claud Screws had it. The grand-jury listened to him but there was no relief we could give him. The sheriff came before the grand-jury on the same matter after the grand-jury called him. The Sheriff said that he was going to keep the pistol until the Judge ordered him to turn it over and if there were any more that had any, he was going to take them. I do not know just the exact words the sheriff used but he said if the grand-jury thought they could do anything about it to stop him, to go ahead and do it. The Sheriff cursed, he said if any of these damn negroes think

they can carry pistols, I am going to take them, that they don't carry them to shoot birds with, or something like that. I do not remember anything else that he said. That was about the substance of what he stated to the grand-jury that I served on.

(No cross examination.)

44

MR. MASTON O'NEAL, 3rd witness sworn in
behalf of Government, testified on

Direct Examination.

My name is Maston O'Neal. I am Solicitor-General of the Albany Circuit. Baker County is in that circuit.

I attended a session of the grand-jury in Baker County in January of this year. I did not know him but Bobby Hall came before the grand-jury. I never had seen him before. He did appear before the grand-jury. I did not send for him.

As I came back into the grand-jury after the noon hour one day he was already in the room. He asked the grand-jury to require the sheriff to return his pistol. He said that it had been taken away from him by some officer. I am not sure just who he said. My recollection is he said Eddie Frank Jones. And he said that the pistol had been turned over to Sheriff Screws and that Sheriff Screws at that time had it, and he wanted the grand-jury to return it. I mean to require the sheriff to return it. Of course, the negro was questioned further about it while he was still in the room and it appeared from what he said that the pistol had been in a truck, as I recall it in a pocket or glove compartment or somewhere. And so when the negro left the room I was asked whether or not he had committed a crime and I told them that as I recalled the Georgia law

that the Supreme Court had held that unless the pistol was in his manual possession, that is with respect to his hand or available about his person, that he would not commit the offense of carrying a pistol without license or carrying it concealed; that the Court had held, for example, where the pistol was in some part of a buggy or wagon or automobile that it did not constitute carrying a pistol without a license or carrying it concealed.

If there ever were any charges filed against this negro, Bobby Hall, by the Sheriff or Frank Jones, I was not aware of it.

There has been no complaint filed with me in connection with the death of Bobby Hall against Sheriff Screws, Jones and Kelley. As to whom I depend for investigation of matters that come into my Court, I am an attorney, I am not a detective and I depend on evidence that is available after I come to Court or get into the case, get into a case that is made. The sheriffs and other peace officers of the community generally get the evidence and I act as the attorney for the state. I rely on my sheriffs and policemen and peace officers and private citizens also who prosecute each other to investigate the charges that are lodged in Court. Of course, I do some too after the case is made, if I can.

The grand-jury in Baker County I referred to convened on the third Monday in January and, if my recollection is correct, it was about Wednesday, which was the last day of the session so far as the grand-jury was concerned, when Bobby Hall appeared before them. I can refer to a calendar and tell you the date, the day of the month. After referring to a calendar, if I were going to guess, I would say the 20th of January.

(No cross examination.)

46. MR. ROBT. L. CULPEPPER, 4th witness sworn
in behalf of Government, testified on

Direct Examination.

My name is Robert Culpepper. I am an attorney at law and United States Commissioner also at Camilla, which is my home. I was born and raised there. I practice in that county, Mitchell County, and others.

I knew Robert Hall or Bobby Hall casually. I have seen him once or twice or maybe three times. He called on me along in January. I think he came to my office a little earlier, maybe in December or it might have been the early part of January. He said that either the sheriff or the night watchman over there had his pistol and he wanted me to help him get it. He said something about he thought he could get it if Judge Crowe would give him an order. The first time he came, I do not recall the date but it was several weeks before he came the last time. I believe he asked me if I would see Judge Crowe about the matter, and I either forgot it or for some reason didn't see Judge Crowe. I had forgotten about it when he came the second time, and I go to Newton frequently and I sat down while he was there and dictated a letter to Sheriff Screws about the matter. I have a duplicate copy of that letter that my stenographer made at the time. This letter is dated January 28th. I think it was in the afternoon I wrote it but I do not know. It is ten miles from Camilla over to Newton. I do not know what the mail schedule is over there. I think they have a Star Route that goes over there every afternoon and perhaps comes to Camilla and goes back in the morning. I am pretty sure that is correct. I suppose I mailed the letter the same day I wrote it or rather the lady in my office did. The date of the letter is January 28, 1943.

Q. All right, read it Mr. Culpepper?

A. (Witness reading letter dated January 28, 1943, addressed to Mr. Claud Screws, Newton, Georgia, identified and attached hereto as GOVERNMENT'S EXHIBIT No. 1.)

(Witness): That is dated the 28th. I do not know what day the 28th of January was on. I am inclined to think it was Thursday and I went over to Newton on Saturday afternoon, after lunch. I went in the Court-house at the front gate. I saw some blood on the steps of the Court-house. I passed right by the well. I usually park there somewhere. I did not see the sheriff. This was after the death of Bobby Hall as I heard in Newton at that time that he was dead.

Adjourned for Lunch—12:52 P. M. to 2:05 P. M. (October 4, 1943).

48 MRS. MAMIE WHITE, 5th witness sworn in
behalf of the Government, testified on

Direct Examination.

My name is Mrs. Mamie White. I live about two miles out of Newton. My husband and I have a business in Newton, filling station and drink stand. We do not sell any meals there now. We were running this filling station and drink stand on the 29th of January of this year and selling food at that time.

I knew a negro in that community named Bobby Hall and knew what he did. He was a mechanic over at Butler's service station in the garage there, across the street. Our place is on one side of the highway and his place is on the other side of the highway. I wouldn't

say as I do not know exactly how long he had been running that garage or repair shop.

I remember the night that Bobby Hall was killed, the 29th of January of this year. I was at our place of business that afternoon and evening or rather it was in the evening. I was not there in the afternoon. I saw Bobby Hall around there. He came over to fix the light on a car of my daughter-in-law's at our place. This was after dark, I would say about 7:30 or 8:00. I do not know exactly the time but it was after dark. He came from Mr. Butler's place over there. After he had closed his station he drove his car over there. He fixed the light on my daughter-in-law's car.

I know Sheriff Claud Screws, the defendant Jones here and the defendant Kelley. I saw Sheriff Screws the night of January 29th. I do not know exactly what time it was when the negro was working on the car. It was right after the negro quit working on the car. It was right after. I won't say exactly what time. I would judge about 7:30 or 8:00. I do not know whether this was just about the time that the time changed in Georgia or not. It was after dark is all I know but I wouldn't say what time it was.

I first saw Sheriff Screws parked across the street over by Mr. Butler's station right down underneath the station across from our place, parked in his car, sitting in his car. Bobby Hall at that time was working on the lights of the car, of my daughter-in-law's car at our filling station up underneath the shed under the light there. The sheriff was alone. I would say he stayed there 20 or 30 minutes. He sat there the time the negro was working on the car.

When Bobby Hall left our place of business, after he had fixed my daughter-in-law's car, he got in his car and drove off. I do not know which way he went. He drove off in a Chevrolet coupe, I think. It looked like a Chevro-

let. I did not notice the make of his car but it was a coupe. It was not a truck. It was a passenger car.

Sheriff Screws came over to our place of business right after the negro drove off. I started to get in the car and Mr. Screws drove from across the street right up by my place. He got out. He asked me where Joe Whitlock was, asked me if Joe Whitlock was in there. I didn't see Joe Whitlock. There was some one else in there. There were one or two in there. My husband was in there and Cal Hall, Jr. was in there. I heard no conversation that Sheriff Screws had with any one there only what he said to me. He asked me if Joe Whitlock was in there and I told him no, I hadn't seen him. Well, he was cursing and he said he needn't hide from him because somebody was going with him, that he was going to go and get the black SB and going to kill him, that he had lived too long then; that he was going and get him and kill him, but he didn't say whom and I did not know who he was speaking of.

This was the night the negro was killed the night Mr. Screws came to our place and prior to the time he was killed. I said he was using profanity. He said he needn't be hiding from him because some one was going with him. He asked me about Joe Whitlock and he said he needn't be hiding because some one was going with him after him that he had done lived too long, that he was going to kill him. He said he was going after the black son-of-a-gun or son-of-a-bitch is the words he said, but he didn't say who it was.

Q. (Repeated by reporter): "I will ask you, Mrs. White, to state what was the condition and the appearance of the Sheriff at that time, Sheriff Screws"?

A: Well, he seemed to be drinking. He had off his hat.

Well, he didn't look normal. His hair was down in his eyes and his shirt was all out of his trousers and he was

holding to his car door, standing there just holding to it, reeling and rocking like he was trying to get his balance while he was standing by his car. His shirt was all out of his trousers hanging around, wasn't even in his trousers. His trousers were just hanging on to him.

The sheriff had a pistol and a black jack. His face was red. I said he was holding to the car. I did not get close enough to him to smell whether he had the smell of whiskey on him.

I got in the car and went to the drugstore and picked up my daughter-in-law to go home and I left him standing there. He called Cal Hall, Jr. and I walked on to the car. The sheriff called Cal Hal, Jr. He was still using profane language: When I left there I left Sheriff Screws going toward the door where Cal Hall was. When I walked around the back of the car he was asking me those questions and I got in the car and drove off. I do not know whether he ever talked to Cal or not but he called him. Mr. Screws asked me this question. He was talking to me and cursing and when I drove off he called Cal Hall, Jr. I do not know whether he ever talked to him or not because I left.

I said I know Jim Bob Kelley. I have known him eight or ten years, I imagine. He did not come to our place of business that night at any time, not that night he didn't. He came the next morning. He was there early for breakfast the next morning. We usually open at eight o'clock and he came in for breakfast when we opened.

I had some conversation with him. We were discussing the negro getting killed. At the time Jim Bob Kelley came in there I had been over to the Court-house square. I had been over to the market. I saw some blood around the well. I do not know exactly the measurements of the size of the pool of blood. It was a large size place of blood. It was about as large or probably a little smaller than the table the reporter is using. I saw some pieces

of clothing. I don't know whether it was clothes or handkerchiefs or what it was. I went over there about eight o'clock to get ham for breakfast, over to the market. The market is across the street from the well.

I did not observe any evidences on the ground or grass there that indicated anything to me. I did not look on the grass. It was sandy around the well. I didn't go inside of the Court-house square at all. It was after that that Jim Bob Kelley came to our place of business.

We were talking saying something about the killing and Jim Bob Kelley said that I might be talking too much, said I had better not be saying too much, I might be talking too much; and he was drunk and I didn't say very much more to him. He ordered his breakfast but he didn't eat it. He sat up and went to sleep in his place.

Q. Why do you say he was drunk?

A. I saw him drink in my place.

Q. Did he do anything else to indicate he was drunk?

A. Not anything except spill his coffee.

I did not observe any blood on Mr. Kelley. I did not question him about it any way. He made no remark about anybody being dead. We talked about the negro being dead because the negro came in and asked my husband to call and see if the negro was at the hospital and he told them that the negro was dead and that is how I knew that the negro was dead. I do not mean Jim Bob Kelley said that but ever who he called at the hospital and my husband spoke to said Bobby was dead. That's how we knew he was dead and Mr. Kelley was in there at the time. Kelley did not say anything about it except he said that it was just another negro dead. He said that to me. As to the occasion for his saying that, I said, I was just talking like everybody else does and I said it was a shame for anybody to get drunk and kill a negro and he said I had better hush, might be talking too much. He

said it is just another dead negro. That was the conversation that we had.

I stated that I know Mr. Frank Edward Jones, the policeman there. I have known him all of his life. Frank Jones came into our place of business that night of the 30th about eight o'clock, the night following the killing. I was sitting at the stove and he said I looked like I was mad and I told him that I was sick, and he asked me what made me sick and I said seeing all of that blood all day. He said "You let a little thing like that make you sick?" And I said "Yes, wouldn't it you?" And he said "No, I helped make him spill it and it didn't make me sick."

Cross Examination.

I have known Sheriff Screws all my life. I am not very friendly toward Mr. Screws. However, I do not hate him. I recall the time that the sheriff was in the hospital here in Albany and they thought his eyes were out. I did not make the statement to Mrs. Clyde Edwards that I didn't care about seeing him blind but I would like to go to the son-of-a-bitch's funeral. I did not make that statement. I did not make that statement to or in the presence of Mrs. Clyde Edwards. I did not make any statement of that nature in her presence. I said I never made that statement in the presence of anybody, not that I would like to go to his funeral I did not. I didn't say that. I did not make any statement about I would like to see the son-of-a-bitch a corpse. I did not say anything about wishing he was dead or either wishing he was blind or about his being a corpse. I did not call him a son-of-a-bitch.

I never made a statement to Mr. Rob Wolf that I had prayed to the Lord to get Him to forgive me, and be

friendly toward Sheriff Screws but that every time I saw the son-of-a-bitch I got mad again. I did not make that statement.

55

MR. CAL HALL, JR., 6th witness sworn in behalf of Government, testified on

Direct Examination.

My name is Cal Hall, Jr. I live at Newton or out from Newton in Baker County.

I remember the night that Bobby Hall was killed, January 29th of this year. I was at Mr. Joe White's filling station early that night. I do not recall who all was in the station. I went in to see Mr. White about a tire. I couldn't say whether Mrs. White was there or not. There were several in there. I saw Sheriff Screws on that occasion. He came in the station while I was there. He had some conversation with me. He walked in and asked me did I have any guts and I told him yes, a little bit and he said well I am going to get Bobby Hall and I told him no I couldn't afford to go because I worked negroes and I didn't go with arresting officers. He told me he was going to get Bobby Hall. I imagine that was about 9:30.

I stayed there about 20 minutes. The sheriff had walked outside and he was outside when I left. He was not using any profanity during the time that he was around there. I did not hear any profanity.

I saw the sheriff later that evening when he came in Mr. Johnny West's about 30 or 40 minutes after he had left the filling station. At that time he and Mr. Kelley and Mr. Jones were together. I refer to Frank Jones, the defendant here and Jim Bob Kelley. Johnny West's place is a bar-room. When the three came into West's bar-room, Jones he danced but Screws he was standing back there

and he started to talk to me. We started to talk to each other by the fire. I left there before they did. I left more than the three of them there. I left more than that there. I left Minter and his wife and Mrs. Price and Johnny West and Kelley and Jones.

As to the physical appearance of the sheriff, he acted normal just like he always did. He wasn't cursing or anything. I do not recall whether he had his hat on or not. I did not notice his shirt. I didn't pay any attention to how he was dressed or nothing, did not notice his trousers. He did ask me to go with him to get Bobby Hall and I declined.

(No cross examination.)

56 MR. JOHNNY WEST, 7th witness sworn in behalf of the Government, testified on

Direct Examination.

My name is Johnny West. I live at Newton. I operate a retail liquor store. I know Sheriff Screws. I know Jim Bob Kelley and Frank Edward Jones. I remember the night before Bobby Hall was killed the next morning there in Newton, or so they tell me. Sheriff Screws and Jones and Kelley came to my place that night. I suppose it was somewhere between 9:00 and 10:00 o'clock. I didn't have any timepiece. It was a little after dark, good while. They bought some liquor, I remember one pint, and they drank it, the crowd that was in there, I suppose. It was pretty good crowd went in and out and I waited on lot of people while they were in there; different ones.

I suppose they stayed in there until about eleven o'clock, the way I would figure it out. While they were in there, there was a pistol fired off. If the sheriff had his pistol I never noticed it. Of course, he is supposed to have one.

and generally do but I never really paid no attention to it if he had one. If Frank Jones or Kelley had one I did not see it. I do not remember seeing any one there that night with a pistol.

The pistol was fired in the back end of the store and I was up at the front end when it was firing is the best of my recollection. Screws and Kelley and Jones were all in the back end at that time. Frank Jones is the only one that danced. He and Mrs. Price danced. I think that was the only one he danced with but there was nobody dancing at the time the gun was fired, if I do not make any mistake.

I immediately went back there when the gun fired. I never found anything back there except the same crowd was there and I seen where the bullet went in the floor. I went around and looked at it. They were talking about it back there but to tell you the truth I don't even remember what they were saying. Just as soon as the pistol fired, Jack Minter and his wife were in there and they left out; in a few minutes they came back and got Mrs. Price, or Jack Minter went out and she went out with him, and I was waiting on somebody up at the front end of the store getting them a cold drink of some kind when the gun fired to the best of my recollection.

I heard some conversation there that night about a negro. I heard Kelley tell the sheriff; said we are wasting time or burning time, something or another to that effect, and said if you don't let's go, we will miss that negro or that party or that fellow.

The three of them did not leave there together. Kelley and Jones went out ahead and Claud, the sheriff, stayed in there a minute or two after they left out or a few minutes. Sheriff Screws told me he was going to arrest a negro, Bobby Hall, or was going after him, told me he was going after him. He said he was going after Bobby Hall. They left out and I told the sheriff if I was him

that I wouldn't go, not that night, that I would wait until some other time, until the next day, is the best of my recollection.

Q. Why did you tell him that or give him that advice?

A. Well, Kelley and them were all drinking and I could tell that he was drinking some, that the sheriff was and I just thought I would just ask him as a friend, thought probably it would be better. I told him to go on home. The best of my recollection this was about eleven o'clock as well as I can judge.

58

MRS. JOSEPHINE PRICE, 8th witness sworn
in behalf of Government, testified on

Direct Examination.

I am Mrs. Josephine Price. I live at Newton. On the night of the 29th of January of this year, the night Bobby Hall was killed, in Newton, I was in Newton that night, and I went to Johnny West's place there. I went with Mr. and Mrs. Jack Minter.

I know Sheriff Screws, Frank Jones and Jim Bob Kelley. I saw them at Mr. West's place on that night. I was there with my friends. I do not know how long they stayed there. I left them there. They were there when I got there and I left before they did. I imagine I stayed there 20 or maybe 30 minutes. I found Sheriff Screws, Jones and Kelley there when I went to the place and I stayed there 20 or 30 minutes, right about that, I do not know just how long, and when I left there, I left Screws, Jones and Kelley there. I do not know what they were doing. I didn't see them doing anything. I do not remember whether they were sitting or standing. I do not remember anything at all about what they did. As

to there being any reason for my recollection being hazy, it just didn't register. I just didn't notice them.

Nothing happened while I was there. I heard something and I thought it was a gun. I was in Mr. Johnny West's place when that happened. I was in the room where they were dancing at that time. I danced with Mr. Jones a little. I heard a noise which I thought was a shot. They said it was. I do not know who said it. Jones did not say it. I do not remember Kelley saying it and I wouldn't think Screws said so. Mr. and Mrs. Minter were also in there. I don't even remember if we six were the only persons in the room at that time. I do not remember who was in there.

I couldn't say that the sheriff had a gun. I would figure that the sheriff had a gun, he had a right to. I do not remember seeing one. I do not remember seeing a gun on him or a black jack. I do not remember seeing a gun on Kelley. Minter did not have a gun. I did not see anybody in that room with a gun. I do not know how it happened.

As to the appearance and demeanor of Kelley and Jones and Screws when I went into the bar-room, they just acted natural to me. By natural I mean just like they always act. They did appear to be gay a little. I did not see any liquor there. I didn't stay there all evening.

I do not know how large this room is that we were in and that the shot was fired in. I couldn't even begin to say. I would think it was as long as from me to the district attorney and I imagine it was about as wide as from him to me. I think it was larger than that. I just don't know how large it is. I do not know.

(No cross examination.)

60 MRS. VELMA MINTER, 9th witness sworn in
behalf of Government, testified on

Direct Examination.

I am Mrs. Velma Minter. I live in Newton and I was living there on the 29th of January of this year. The night of the 29th of January, the night that Bobby Hall was killed, my husband and I went to Johnny West's place with Mrs. Josephine Price. She was a member of our party.

I know Sheriff Screws, Frank Jones and Jim Bob Kelley and I saw those three men that night. They were at Johnny West's place. There were not doing anything, not a thing at all. I do not know how long they stayed there. I think they were there when we left. I won't be positive but I think they was. They were there when we got there also.

I heard something that night but I couldn't swear it was a shot because I didn't see it. It was either a car back-fired or a shot. They had the victrola playing. I was in the back-room at Mr. West's. I do not know where the noise occurred at. I went in the back-room that night and back there was myself, my husband, Mr. Screws, Mr. Jones, Mr. Kelley and Mrs. Price six of us. Jones and Screws had guns. I saw nobody else there with guns. I did not see a bullet in the floor there, did not. I stayed there about two minutes after this explosion or whatever it was occurred. I had already started out. When I left I left Jones and Kelley and Screws there, according to the best of my recollection.

(No cross examination.)

61. MR. LOREAT HATCHER, 10th witness sworn
in behalf of Government, testified on

Direct Examination.

I am Loreat Hatcher. I live at Newton. On the 29th of January this year I was operating a beer and wine stand there. I remember the night of Bobby Hall's death there. I know Frank Jones and Jim Bob Kelley. I have known Mr. Jones for three or four years and Mr. Kelley I have been knowing him practically all my life.

On this night, the 29th of January, the negro school had a dance there. I saw Frank Jones and Jim Bob Kelley on this night. They came up there to my place and came in and bought some beer and some wine, and drank it there in my place of business. I do not know how long they stayed there, but fifteen, or twenty, or thirty minutes, something like that. I imagine it was around 10:00 or 10:30, something like that. That is my estimate about it. They stayed there somewhere in the neighborhood of 30 minutes, something like that. I do not think they bought beer and wine more than once. I think they drank it just before they left. One drank some wine and the other a bottle of beer. I think Mr. Jones drank a bottle of beer and Mr. Kelley was drinking wine.

I was about 30 foot from the car they drove up in and I seen it out there. I couldn't say whose car it was.

(No cross examination)

62

MR. JOHNNY WEST, 7th Government witness,
recalled, testified further on

Direct Examination.

I did not take the shot or bullet out of the floor when I heard the shot fired in the back end of my place and went back there. I seen it. I seen where it went in and where it had bulged the floor. It went in this way and bulged the next board up, narrow board you know, went in ~~one~~ board and come out and bulged up and made a raised-up place where it almost come out. You could almost see it. And then about a week after then Jack Minter was helping me and I got him to repair the floor on the far side of where this shot they fired, where this bullet was in the floor and I started and finally taken it out, taken a knife and gouged it out.

I know what finally became of the bullet now. I first thought I throwed it away and I told the FBI that. They wanted to see it and I told them it was battered up so bad that nobody couldn't tell anything about it, and I told them I thought I throwed it away; and after then Jack, me and him was talking and I remembered by him reminding me that he taken it and carried it off with him and he told me that he gave it to little Billy Joe Price. Mrs. Price's boy, and he shot it in a sling-shot.

When I went back there after hearing the shot I do not think anybody pointed out to me the place where the bullet had gone in the floor. I just went around and looked and I said who done the shooting and they said well go there and look of something like that; and I went there and just looked around and noticed how near it come to coming out.

The building is about 30 x 30 and the back room, I have a station which takes up little over half of the building, it is about 16 x 30, 30 feet long and 16 feet wide. That is the size of the back room where the dance was going on.

63

ANNIE PEARL HALL (Col), 11th witness
sworn in behalf of the Government, testified on

Direct Examination.

I am Annie Pearl Hall, the wife of Robert Hall or Bobby Hall as he was called. I has one child. Robert and I lived the first of this year on his daddy's place at Newton about a mile and a half from Newton.

I remember, of course, the night that Bobby Hall was killed. He came home that night about 9:00 o'clock. When he got home he ate his supper and went to bed. On Friday night, the 29th, Bobby came home and ate his supper and went to bed. Somebody came there before he got home. There was a car come there and called for him. A car came there before he got home. I asked him who it was and he said it was Mr. Kelley. I did not see the car. It run like an old model, kind-of old car like. It was dark. It was a pretty good while before Bobby got home. It was just first night. I was ironing and I didn't go to the door to see who it was but I asked him and he said it was Mr. Kelley. When this first car came there he wanted to know, he asked where was Bobby? I told him he wasn't home. He asked me did I know what time he would be home and I told him no, sir. I said do there be any message and he said no, said he just wanted him to fix his car light. So, the car turned around and went toward town. I asked the man who he was and he said it was Mr. Kelley. I could not see the man. I did not go to the door. I just asked him. It was dark and I was ironing. I did not go to the door. This occurred a pretty good while before Bobby came home.

After Bobby went to bed and went to sleep I stayed up about half an hour ironing after he was gone to sleep. I then went to bed. Bobby was asleep when I went to bed. I went to sleep. Somebody else came out there that

night. It was Mr. Jones and he come in to the house. He woke us up. I know Mr. Frank Jones, the defendant over here. He is the man I am talking about. He was knocking on the door and it woke us up and Bobby asked who it was and he said it was Mr. Jones and he asked him what did he want. He said he wanted to talk with him. Mr. Jones said he wanted to talk with him.

Bobby got up to light the lamp and put on his pants and opened the door. Mr. Jones did not say what he wanted to talk with Bobby about until he got inside. He told him he had a warrant for him for stealing a spare tire. Bobby got up at that time. He told him he had a warrant for him for stealing a spare tire from Mr. Durham. He either said Mr. Durham or Mr. George. It was Durham. They were the onliest two I know, so he was one of them, Mr. George Durham. Mr. Jones did not have the warrant with him or rather I did not see any.

Bobby told Mr. Jones, "Well, I declare, Mr. Jones, I haven't stole no tire". Mr. Frank Jones said "Well, no damn short talk about it", told him to get on his clothes and let's go. Bobby started to putting on his clothes. He put on his shirt and then he went to putting on his pants. I mean putting on his shoes, sitting down, and when he went to putting on his shoes, Mr. Jones saw the gun behind the bed, a pump shot-gun behind the bed that I was in. Bobby was sitting in the chair at that time by the fire place putting on his shoes. Mr. Frank Jones told him he had a lot of ammunition around him and he went around and got the gun and worked it and one shell fell out, and he told him he would carry it and keep it until he got back. It was a red shell that fell out on the floor, just one shell.

Mr. Jones also told Bobby he had been before the grand jury to get his pistol back, that he had been before the grand jury trying to get his pistol and that he had been to a lawyer and called another lawyer's name. He told

him he had seen that lawyer and he saw lawyer Culpepper. Mr. Frank Jones called some other lawyer's name that Bobby had been to see and Bobby told him that he had been to see Mr. Culpepper, Mr. Robert Culpepper at Camilla.

That is all that Mr. Jones said in the house. Only one man came in the house and that was Mr. Frank Jones. There was one man talking back from the car to him and Bobby asked him who it was and he said it was Sheriff Screws. I saw the man after I went to the door to shut the door. There was another man out to the car when I went to shut the door.

Mr. Jones arrested Bobby there at the house and they went on out to the car and they were handcuffing him when I went to the door.

When he left the house Bobby had on shoes and socks and his pants and his shirt. He had on his underclothes too. He had on a yellow shirt and yellow pants. The shirt was kind-of faded like but the pants were real brown. The shirt was kind-of old like, kind-of an old shirt.

When Mr. Jones took Bobby out of the house he carried the shot-gun with him. He didn't give any reason to Bobby for taking the shot-gun. He just told him he would keep it until he come back. He took him out the front door. I went to the door and shut the door and went out the back door.

It wasn't so very far from the front door to the place where the car was. It wasn't as far as from here to the back of the building. It wasn't as far as from me to the back of the building. The spot-light was on, on the car. The car looked like Mr. Screws car. I had seen and I know Sheriff Screws car. I have known Sheriff Screws ever since I have been up here. We moved up here over five years ago. The car was parked right in front of the door. The car drove up in front of my door. When I went to

the door, Bobby and Mr. Jones and this other man were out to the car. The other man was kind-of on the side of the car as far as I could see.

I said something a while ago about their handcuffing Bobby. They were handcuffing him when I went to the door to shut the door. They left the door open when they went out and I got up to shut the door and when I went to the door they were handcuffing him. I shut the door and went out the back door. I had left the house before they left going up to my daddy-in-law's. I went out the back door and struck out for my father-in-law's.

Before the car left my place there I had got up there right in front of my father-in-law's house but I had to cross another road. I hadn't got over to the house. I saw the car leave my house. It was headed back toward town. I went on across to my daddy-in-law's house. They did not pass me in the road. They come up in front of my daddy-in-law's house and come out to the other road.

I went up there and reported to my father-in-law, Will Hall, what had happened. The next morning I went up town with Will, my father-in-law. We drove up in front of the Court-house nearly in front of the Suwanee Store and we got out of the car and went to the jail and Mr. Hall asked them where was Bobby. We got some information about Bobby at Mr. Butler's filling station. We went to the well. I did not see any clothes around the well there. I saw a shoe there. I recognized it as Bobby's shoe. We got to Newton just at sun-up. The sun wasn't quite up. It was real early. We left home early. We went up there to see about getting him out of jail.

I went on up to Albany with Will but we went back home before we went up there. When I saw Bobby he was at the undertaking establishment.

I would recognize Bobby's shotgun if I were to see it.

I said that Mr. Frank Jones told Bobby that he had a warrant for him for stealing a tire from Mr. Durham.

Mr. Jones made no search of the house that night that he arrested Bobby to see if he could find the tire. He didn't ask Bobby anything about it no more than he told him he had a warrant for him, and Bobby told him he didn't get it. No search was made of the premises.

This is Bobby's shotgun. I am familiar with Bobby's pistol and I know would it if I were to see it too. I would say that was his pistol. He had it about three years I think. He carried it in his car in the drawer in the front.

Bobby done mechanic work, worked on cars and tractors like that. He went out through the country working. He was called out at night to do some work on automobiles or trucks. On this date, the 29th of January before he was killed that night, he had been out to Mrs. Fannie Hall's which is about five miles, I guess, five or six miles from Newton. I guess it is about that far. He had been out there working on her tractor that day. He did not come home for dinner.

Mr. Jones came out there about 10:00 or 11:00 o'clock I guess it was. We didn't have no timepiece but it was late in the night.

When I was up there around the well the next morning, around the pool of blood, I saw a shell laying down there on the ground. It was a red shell hull; it was not a shell. It was down on the ground by the blood. It was empty, one red shell. I didn't pay it enough attention to say that it looked like the shell that was britched out of the gun out there at the house but it was a red shell.

I noticed on the ground or the sidewalk that there was a drag from the blood that went through the Courthouse yard on to the jail. It was a drag of blood up the sidewalk. I went on down to the jail and there was blood at the door.

There were three gun-shot shells in my house out there and I gave the three shells to the FBI Agent. These three look like the ones I gave to them because I put my initials

on them. Those were the only three shells left in the house.

Cross Examination.

I said that Robert, my husband, kept the pistol in the pocket of his car all the time, this pistol here.

68 MR. MARCUS B. CALHOUN, 12th witness,
sworn in behalf of Government, testified on

Direct Examination.

My name is Marcus B. Calhoun. I am a Special Agent of the Federal Bureau of Investigation. I have been with the Bureau since October 14, 1940. I am attached to the Atlanta office, field division.

With another agent I made investigation at Newton, Ga. concerning the death of Bobby Hall. Special Agent William H. Crawford, the gentleman sitting there, was associated with me in that investigation. The investigation was started around February 20, 1943. I shall refer to my notes or memorandum to refresh my memory as we go along.

Mr. Crawford and I went to Newton on February 20, 1943 to look into this matter. The first person that we went to down there to interview about it was Sheriff M. C. Screws. Mr. Screws is the gentleman there with the dark glasses sitting right behind Mr. Hager. Mr. Jones is the gentleman with the red and blue tie sitting diagonally in front of the district attorney. Mr. Kelley is the gentleman to the left of Mr. Jones. The first person that we approached after we got to Newton on this investigation was the defendant Screws. We made inquiries as to where he

could be located. He was the first person we interviewed in connection with the case.

We found Sheriff Screws on the road between Camilla and Newton. We went from there to his house, which is on, I believe, the Elmerdell Road, and it was at his house that the interview was conducted. That was February 20, 1943. Sheriff Screws discussed the matter with us. He talked to us freely and voluntarily about it.

Q. Did he make any statement to you as to who killed this Bobby Hall?

The Sheriff did not specify any person as being the individual who actually killed Bobby Hall. He stated that Hall had been killed while attempting to escape after being arrested or while resisting arrest. He stated that Hall had assaulted him and that he had in the defense of his own person had hit Hall around the face and head with his fist and that the defendant Frank Jones had struck Hall several times around the head with a black-jack.

The Sheriff said that he had known this negro Bobby Hall all of Hall's life, that the negro was born and raised in his county. Sheriff Screws said that he had had considerable trouble with this negro for the past two years, that is for two years prior to the time the negro was killed. He described this negro as being, I believe, something in the nature of a biggety negro, that he considered himself to be a leader among the colored people in the community. He said that he had not ever made a case against this man but that he arrested the man on one occasion at the request of the Sheriff of Mitchell County.

As to the occurrences on the night of the killing, January 29th, Sheriff Screws said that he was in his office around sundown of January 29th working on some of his tax books and at that time Mr. George Durham, whom he described as being a farmer in Baker County, came into his office and gave him a warrant which was drawn by Mr. T. A. Riley, the Justice of the Peace in Newton

County. This warrant was for the arrest of Bobby Hall, charging him with the theft of Durham's tire. I believe the tire was described as a truck tire and a Firestone truck tire. The Sheriff said that he was busy and did not have an opportunity to serve that warrant at the time it was handed to him by Durham. He said that he worked in his office up until around—he said that some time later in the night after he had received the warrant from Durham that Frank Jones, the night policeman at Newton, and Jim Bob Kelley, a resident of Baker County, came into his office. He didn't specify the time these gentlemen came into his office but he stated that at about mid-night on the night of January 29th he told Frank Jones that he had a warrant for the arrest of Bobby Hall for stealing a truck tire and requested that Jones serve the warrant on Hall. Sheriff Screws said that he asked Jim Bob Kelley to go with Jones to serve this warrant and told him to take his automobile, that is the Sheriff's automobile.

The Sheriff said that they left his office to go after Hall. He stated that approximately 30 minutes later, that would be about 12:30 A. M. on the morning of January 30th, he had left his office and was standing by the well at the Courthouse square in Newton, getting a drink of water, when Frank Jones and Jim Bob Kelley drove up in his car. He said that he asked them if they had been able to get Hall and about that time he saw Hall seated in the back seat of his car. He did not say where Kelley and Jones were seated. I do not think he indicated specifically where they were seated, but he stated that he opened the back door of the car and told Hall to get out. He stated that as Hall started getting out of the car he had a shotgun in his hand and the Sheriff didn't exactly know where he got the shotgun and he said he came out of the car with a shotgun as if he was going to shoot the sheriff with the gun or assault him with the gun. Sheriff, Screws

stated that he knocked this shotgun into the air and it discharged into the air as Hall was getting out of the car.

He said that he immediately attacked Hall with his fist, beating him around the face and head and called to Frank Jones to help him out. He said that Frank Jones was standing in a position sort of behind Hall and began hitting him with a blackjack. The sheriff said that Jim Bob Kelley ran in and seized the gun and wrested it away from Hall. The sheriff said he did not know how many times he hit Hall or how many times Jones hit Hall. He said it took several licks before Hall fell to the ground. He stated that after Hall fell to the ground no one struck him any more.

The Sheriff told us that after Hall fell to the ground, Jones and Kelley picked him up, one taking him by each arm and carried him through the Courthouse by the office to get the key for the jail, then out to the jail where they put him in jail. The Sheriff said that he did not go to the jail himself but went back to his office. He told us that after they put this negro in jail, they came back to his office and he inquired as to Hall's condition, and that Jones told him Hall seemed to be pretty badly injured. The sheriff said that he made a long distance call to Dr. Barnett in Albany, telling him that he was going to send a negro patient to Albany and requesting that Dr. Barnett furnish the necessary medical care. Sheriff Screws said he then called the hospital, the Phoebe Putney Hospital, in Albany and requested that they send an ambulance to Newton to get a negro patient. He told us that he and Jones and Kelley all remained in the office until the ambulance arrived, and then Jones and Kelley went out to the jail to help the men on the ambulance put the negro in the ambulance. He said that he did not go to the jail and as a matter of fact did not see Hall after he was taken from the well and put in jail. He did not state that he never went to the jail that night. He stated that

he did not go to the jail when they carried the negro and put him in the jail and that he remained in his office after he was put in jail and until the time the ambulance arrived and that he did not go to the jail at that time.

Mr. Crawford and I interviewed the Sheriff on two occasions. A third time we talked to him and asked him if he had any additions that he would like to make to the previous interview, at which time he stated that he did not. What I have just related is the substance of the first interview with the exception of this statement: We specifically asked the Sheriff whether or not this negro was handcuffed at the time that he was brought to the jail—at the time that he was brought to the well. The sheriff said that he was not handcuffed at that time and that the negro was not handcuffed at any time in his presence.

During our first interview there the Sheriff did make some mention of Bobby Hall coming to his house some time in December about a pistol. The Sheriff stated that some time, I believe he said around the middle of December, Frank Jones, the night policeman in Newton called him and told him that Bobby Hall was in Newton, had been drinking and had a pistol. The Sheriff said that he told Jones to get the pistol from Hall and if Hall was drunk to lock him up; if he was not, to tell him to go home. He stated that shortly after this conversation Hall came by his house and told him that Jones had taken his pistol. He told Sheriff Screws that Jones had taken the pistol and that Hall requested that the Sheriff give him an order to get the pistol back. The Sheriff stated that he told Hall that he would have to check into the matter before he could give him the pistol.

The Sheriff told us something about Bobby's father coming to see him about the pistol. He said that Willie Hall, the father of Bobby Hall, came to see him shortly after this and asked him about the pistol and that he told

him he would have to check up on it. He said that Willie Hall came to see him a second time and he told him then that he would have to see Judge Crowe in Camilla before he could get the pistol back.

The Sheriff said something to us about Bobby going before the grand-jury in January. He said that around the middle of January he was called, the sheriff was called; before the Baker County grand-jury and asked to relate the circumstances surrounding the occasion where Frank Jones took the pistol from Bobby Hall. The sheriff stated that he testified before the grand-jury about this pistol and that the grand-jury did not take any action in regard to the pistol.

The Sheriff in the interview said something about having received a letter from Robert Culpepper, an attorney at law. He stated that he had received a letter from Mr. Culpepper about Bobby Hall's pistol. He said that he received this letter on the same day that Hall was killed or on the day preceding the day Hall was killed. He was not sure whether he received it the day he was killed or the day before he was killed but stated that it was one of those two days.

The Sheriff delivered to us a warrant that he said was placed in his hands. This is the warrant that he delivered to us. I had some discussion with the Sheriff about who wrote that warrant. The sheriff said that he did not know who wrote the warrant. He said that the warrant was given to him by George Durham and he did not know who wrote the warrant. I believe he told us that the first time that we interviewed him. We secured the warrant on the date of the first interview.

Some time later, several days after that, after we previously interviewed the sheriff, we examined the docket book of the Justice of Peace there at Newton.

I said that we interviewed the Sheriff a second time. I would say that was about three days after the first inter-

view, which would have made it around February 23, 1943, and I believe that there were three interviews and on a fourth occasion we went and talked with the Sheriff and he said that he had nothing else he wanted to say; so that would be three interviews instead of the original two that I mentioned.

I said we examined the dockets of the Justice of Peace. The docket at that time was lodged in Sheriff Screws' office. We made some photographs of docket entries in that docket. These are the photographs that we made. We had some discussion with Sheriff Screws concerning the entry of the warrant for the arrest of Bobby Hall. That was the entry that we were interested in. We asked him about the handwriting in that particular entry on the docket. The Sheriff stated that that was not his handwriting and that he did not recognize that handwriting, that he did not know whose handwriting it was. He was specifically asked whether or not he had made that entry or any other entry in the docket book of the Justice of the Peace and he stated that he had never made any entry whatsoever in that book, that he had never made any entry.

Sheriff Screws did not make any statement to us as to the position of the shotgun in the automobile when Kelley and Jones arrived with Bobby Hall at the well that night. He did not make any statement as to the position of the gun in the car. The first mention he made of the gun was that the gun was in Hall's hands.

The Sheriff stated that he had not been drinking any that night. Sheriff Screws turned over to me and to Mr. Crawford this pistol and the shotgun that has been identified here.

The Sheriff stated to us that he was working on tax books in his office at 12:00 o'clock or 12:30.

After interviewing the Sheriff, I believe the next person we interviewed was Jim Bob Kelley.

Q. Did he make any statements to you?

A. Yes, he did.

Q. Freely and voluntarily?

We found Mr. Kelley on the road between Newton and Elmerdell. This was on February 20, 1943, the same day we interviewed the sheriff the first time. He talked to us freely and voluntarily. We offered him no hope of reward and did not try to intimidate or arouse his fears in any manner. We talked to him on the road between Newton and Elmerdell, I would say about five miles out of Newton on the Elmerdell Road. This was approximately an hour or maybe a little longer after we had left the sheriff. The time between the two interviews was consumed in trying to locate Mr. Kelley.

The day of the killing was January 29th or the early morning hours of January 30, 1943. This interview with Kelley was on February 20th. Kelley stated that on the night of January 29th, around 11:00 o'clock, he had gone to Sheriff Screws office in the Courthouse to see the sheriff about buying a piece of real property from the sheriff. He said that while he was there Frank Jones came into the Sheriff's office and after Frank Jones got there the sheriff told Jones that he had a warrant for the arrest of Bobby Hall. This was Kelley talking to us. He said that the sheriff asked Jones to serve this warrant on Hall and asked him to go with Jones to serve the warrant.

Kelley stated that he and Frank Jones went in the Sheriff's car to Bobby Hall's house. I do not believe he made any statement as to which one of them drove the automobile. He said that they drove from Newton, Georgia, out to Hall's home, which is located about a mile and a half out of Newton on the Colquitt road, that when they arrived there they stopped the car and Jones went into the house and he remained in the car. Kelley stated that he waited in the car for three or four minutes and then got out of the car and walked up to the front of the house.

He said that the door was cracked and that he could see in and that he saw Jones standing inside of Hall's house with a shotgun in his hand and said about that time he saw the negro Bobby Hall coming out of the front door. Kelley stated that on the way from Hall's home back to Newton, Hall said—that Hall sat in the back seat and he and Frank Jones sat in the front seat of the Sheriff's automobile. He stated that they had taken this shotgun and placed it between them in the front seat with the butt resting on the floorboard and the barrel leaning against the back of the front seat. Kelley stated that Hall was not handcuffed, that his wrists were not bound or restrained in any manner whatsoever. We asked Kelley if he was handcuffed. We asked that specific question.

Kelley also stated that on the way from Hall's house to town Frank Jones asked Hall what he did with the automobile tire and that Hall had said something to the effect that he didn't get any damn tire. He told us that this was the only conversation which took place between Hall's home and town. Kelley stated that when they drove up in front of the Courthouse at Newton, Sheriff screws was standing by the well. He said that Frank Jones got out of the automobile and said "Sheriff, here's your man."

Kelley stated that the sheriff attempted to open the left rear door of the automobile but it was locked and that he had to come around and open the right rear door. I do not believe Kelley said which side of the car he was on. O yes, he did, he said that the sheriff had to come around to the right side of the automobile to open the door and that was the side he was sitting on, that is the right side of the automobile. Kelley stated that when the Sheriff opened the right hand rear door of the automobile, the negro said "Looks like you damn white sons-o-bitches are going to lock me up anyway." He said that the negro then grabbed the shotgun by the barrel. Kelley stated that at this time he was still seated on the front seat of the

automobile and that when he saw the negro grab the gun by the barrel he caught the stock of the gun in his left hand, the stock being on his left side. He stated that at that time Jones and the Sheriff were on the outside of the automobile. He stated that the negro succeeded in getting the gun away from him and got out of the car with the gun and that immediately as he got on the ground the sheriff and Frank Jones both attacked him or started hitting him around the head. Kelley stated that the sheriff was beating the negro around his head with his fist and that Jones was hitting him with a blackjack.

Kelley said he did not remember whether the gun remained in the hands of Frank Jones or in the hands of the sheriff or whether it was thrown on the ground. He did state that he never touched the gun after he had gotten out of the car and after the negro had succeeded in wrestling it away from him in the car.

Kelley also stated that he did not know how many times the negro was hit but estimated that he received quite a few licks around the head. He stated that the negro was beaten to the ground. He said that after the negro was beaten to the ground he and Frank Jones picked him up, one taking each arm, and walked him through the Courthouse and over to the jail. They said they put him in the jail and locked him in there.

Kelley stated that from the time that the negro attacked or attempted to attack the sheriff or assault the sheriff with the gun, that the negro made no other statement; that he made no other statement and did not utter any sounds. He also told us that the negro was wearing shirt, trousers, sox and shoes during the entire episode.

Kelley made some admission that he had had something to drink that night. He said that he had had one bottle of beer about an hour before he went to the sheriff's office but that he did not drink any other intoxicating beverages that night.

Upon the first interview Kelley stated that he did not know whether the gun was loaded or not because it was not fired in his presence or hearing. He made that statement when he was first interviewed on February 20th. His first statement was that the gun, that he didn't know whether it was loaded or not because it was not fired in his presence or in his hearing. He later made another statement about that. He later qualified that or changed that statement to the effect that although he was not positive, he believed that the gun was fired during the altercation that took place after Hall got out of the automobile.

We next interviewed Mr. Frank Jones, one of the defendants here. We interviewed him on the late afternoon of February 20th, the same day. The actual interview was conducted about, I would say, about a mile out of Newton on the Coquitt Road. We met him in town in Newton and drove out on this road. The fact that we drove out of town on this road was of no special significance. We simply had no office or other place available to conduct the interview except in the automobile and we just drove away so we would not be in the crowd there in town.

I would estimate the population of Newton to be about 300 or 350 people. It is built around the Courthouse square and is the county site.

Mr. Jones made some statements to us. He talked freely and voluntarily without any inducements or any threats or any intimidation whatsoever.

Mr. Jones said that around 11:00 o'clock on the night of January 29th he went into Sheriff Screws' office and found the sheriff there with Jim Bob Kelley. He said that the sheriff told him that he had a warrant for the arrest of Bobby Hall and wanted him to arrest Hall. Jones stated that the sheriff gave him the warrant and deputized Kelley to go with him to serve the warrant. He said that the warrant was for the theft of a tire. Jones stated that

he and Kelley drove out to Bobby Hall's home in Sheriff Screws' car, that he and Kelley got out of the automobile and went on the porch. He said that he knocked on the door and Hall came to the door. Jones stated that he went into the house and that Kelley waited on the porch. He made some contention about Hall having had something to drink. He said that Hall had had something to drink because he could smell it on his breath. That is what Jones said.

Jones stated that he went into Hall's house and that Kelley remained on the porch. He said that he told Hall that he had a warrant for his arrest and Hall put on his trousers and sat down on a chair at the foot of his bed and began putting on his shoes. Jones stated that there was a shot-gun leaning up against the wall at the head of the bed and that Hall looked in the direction of this shotgun and raised up in his chair like he was going to get on his feet. Jones stated that at that point he drew his pistol, pointed it at Hall and cautioned him against trying to get his gun.

He stated that after Hall had finished dressing, he carried Hall out and put him in the car. He said he had his pistol out from the time he drew it until the time they got Hall in the car. Jones also stated that he did not conduct any search of the premises in an attempt to locate the truck tire.

Jones stated that going back to town he and Kelley were on the front seat and that the negro was in the back. He said something with reference to the position of the shotgun. He said that the shotgun was between him and Kelley in the front seat, with the butt of the gun resting on the floorboard and the barrel resting against the back of the front seat.

Jones said that when they got to town that he got out of the car on the left-hand side and that Kelley got out on the right, that Sheriff Screws opened the right-hand back

door of the automobile and told Hall to get out. He said that the negro said, "It looks like you white sons o' bitches are going to get me anyhow", and came out of the car with the shotgun in his hand. Jones said that Kelley grabbed the gun and pushed it upward and it went into the air, I mean said the sheriff grabbed the gun and it went off up into the air. He stated that he immediately rushed in and got hold of Hall and started hitting him on the head with blackjack trying to knock the gun out of his hands. Jones said that Kelley came into the fracas, grabbed the gun and that after Kelley got the gun he and the sheriff continued to beat the negro until they knocked him off his feet.

Jones said that he and Kelley took the negro, one by each arm, and walked him through the Courthouse to the jail and put him in a cell over there. He said they left him standing up in the cell and locked the door. He said they left him standing up in the cell.

Jones said that as Hall got out of the automobile he had a shotgun and made the statement, as I said before, to the effect that "It looks like you white sons o' bitches are going to get me anyhow."

Jones said that after they put the negro in jail that Sheriff Screws called the hospital in Albany and asked them to send the ambulance for him and that two negroes came from Albany in an ambulance to get the negro. He said that the negroes on the ambulance asked him who it was and he told them it was Bobby. He said one of them asked had Bobby been in a wreck and he said yes or uh huh or something in the affirmative.

We asked Jones in this interview, as to whether or not Bobby Hall was handcuffed. He said at no time did they put any handcuffs on him or any type of restraining device on Bobby Hall.

What I have just testified here is the substance of the conversation or the interview that we had with the defendant, Frank Jones.

Mr. Jones gave us the blackjack and this is it. I would estimate the weight of this blackjack as about four pounds or rather about two pounds I would say. He gave it to us voluntarily.

In the interview with Kelley we asked Kelley whether or not he and Jones searched Bobby Hall's premises for the tire. We asked that question and he said that insofar as he knew no search of the premises was made.

I do not recall that these three defendants were the first three people that Mr. Crawford and I interviewed in this investigation in Newton. I do not recall that we did not talk to somebody in between them. I know that Sheriff Screws was the first and I am relatively positive that Kelley was the second. I do recall that we had to wait for Frank Jones, that he was out of town and after we finished the interview with Kelley we had to wait until he came into Newton, and it was around, it was after dark or just about dark when he got there and we may have talked to some one in between Kelley and Jones. However, the first day that we were there, we interviewed the defendants just as soon as possible. After that Mr. Crawford and I continued our investigation. We interviewed a large number of people in and around Newton. We were down there looking into this matter from February 20th until about March 2nd.

Cross Examination.

I do not know of my own knowledge whether or not the Justice of Peace's docket of the 971 District, Baker County, stays in the sheriff's office all of the time. We only had it on one occasion and we located it there at that time.

When I was testifying about Mr. Kelley's statement a while ago and I said later he said that he believed that the gun was fired, I did not mean some days later but it was later on the same day and during the same investiga-

tion. Mr. Screws first, Mr. Kelley next and Mr. Jones were all investigation or rather interviewed by us one after the other on the same day. That is the same time that we obtained from those three gentlemen written signed statements about what occurred. Each one of them were separate from the others.

While I was testifying I was refreshing my memory from a written signed statement by Mr. Screws. I believe that I covered the statement rather thoroughly. I am not in position to say that I testified as to everything that he told us that day and that is contained in that statement.

As to Mr. Kelley's testimony I was also testifying or refreshing my recollection from a written statement signed by Mr. Kelley as to what occurred on this occasion. I would not undertake to say that I quoted all that Mr. Kelley told us on that occasion.

As to Mr. Frank Jones I was also testifying from a written statement signed by Mr. Jones on this same day and same occasion. I wouldn't say that I testified to everything he said. I would say that it was covered thoroughly. I do have a written statement before me now signed by Mr. Jones.

With reference to Jones I did actually omit something that was said to us by Jones about what happened. There was some conversation that Jones had seen Hall with a pistol prior to the time that this occurrence took place. Jones said that some time around the first of 1943 he had seen Bobby Hall in Newton with a negro woman named Johnnie Williams. He said that Hall had been drinking at Johnny West's liquor store. Jones said that Hall had called him over to his automobile and shown him a pearl handle 38 automatic. Jones said that he asked Hall if this was the gun he had used in shooting a negro with and that Hall had said yes. Jones said he called Sheriff Screws and told him about Hall having a gun and that the sheriff told him to take the gun away from Hall and if

Hall was drunk to lock him up. He said that Hall was drinking but wasn't drunk; so, he sent him on home.

He made another statement to me just prior to that statement embodied in his written statement. He said that about three years prior to the time of the interview, which occurred on February 20, 1943, that he had been working for the State Highway Department in the vicinity of Bobby Hall's home and that Hall had come out to where he was working and had told him in the presence of four or five other men that the sheriff had arrested him and that he wished that his face had been white and that he would have showed the sheriff something if his face had been white.

I do not believe I made the statement to the effect that I did not cover all the sheriff said. I said I was not sure. I said that I wasn't sure that I covered it all.

Mr. Screws told me that about a year ago that Bobby Hall was involved in a shooting in Mitchell County, that he shot a negro named Burns, the son of Lum Burns. He also told me that he had had trouble with Bobby Hall, that he seemed to be a leader or denominated himself as such and that when a negro got in trouble with the law that he, Bobby Hall, would advise him as to what action he should take.

Q. Why did you omit those?

A. I do not believe I omitted those in the sheriff's statement. I believe I made reference to the fact that the sheriff told us that Bobby Hall considered himself to be a leader among the negroes.

Re-Direct Examination.

Q. I want to ask you one other question about Jones' statement here: When you interviewed him on the 20th of February was he at that time an employee of the City of Newton?

He stated to us on February 20, 1943 that he was not at

that time employed by the City of Newton. He said that he severed his connection with the Town of Newton on February 1, 1943, which was the next day after the killing or two days later. The incident occurred on January 29th or January 30th sometime during that night. He said that he had been discharged by the Mayor for drinking on the job.

The defendants, Screws, Kelley and Jones signed these statements in my presence.

I was quizzed a while ago as to why I didn't testify as to some things in these statements; however, I was attempting to follow the questions and trying to bring out the evidence that the questions asked for. I do not think that I omitted anything that was material in the statement of any one of them.

86 MR. A. B. EDMONDS, 13th witness sworn in
behalf of Government, testified on

Direct Examination.

My name is A. B. Edmonds. Recently I am from Mississippi but I was in Newton, Georgia, Baker County, up until the 14th of this past month. I lived in Newton until the 14th of September. I have recently moved down to Mississippi. I have been living in and around Newton all my life. I was born and raised there around Newton. I was living there on the 29th of January of this year.

I remember the night that Bobby Hall was killed, the 29th of January of this year. On that night I was at my boarding place in Newton, my niece's. She married the Chief of Police in Newton. I was boarding with my niece, Mrs. B. D. Edwards. Her husband, Byron Edwards, is the Chief of Police there.

I was aroused on this night the night of January 29th. It was just before 2:00 o'clock in the morning. I was aroused by my niece walking around in the room. I suppose, or talking. I was across the hall from her. She was up. We didn't have lights in the room at that time but I imagine she had a light. I do not know. I was across the hall from where she was. I got up because she talked like she was excited and when I woke I did not hear any commotion out on the Court-house square but I did later, just a few minutes later. I got up and got on my clothes and walked on out on the porch and walked on to the square. Mr. Edwards, the policeman, went with me, Mr. Byron Edwards, the Chief of Police of Newton.

It was right at the edge of the yard where I come up with him, I do not know just where, but I had left the house a few steps and we went on together. Mr. Byron Edwards, the Chief of Police, and I went on together. We walked on around to the well in front of the Court-house right at the Court-house square.

I seen there Sheriff Screws, Frank Jones and J. B. Kelley. J. B. Kelley was standing near the well. He had a shotgun in his hand. Sheriff Screws and Frank Jones, they were off about 18 or 20 feet from me and looked like a body a-lying on the ground. Frank Jones was hitting the body or looked like he was hitting whatever it was on the ground. I couldn't tell, not right at that time, what it was. Later on, I found out it was a body. It was a human body I discovered after he raised up. He was dying on his stomach and he raised up and groaned and lay back down. He never moved any more so far as I saw. When he lay back down I walked on into the Courtroom, into the Courthouse, and went on around back to the house.

While I was standing there I heard Sheriff Screws tell Jones to hit him again. He told him to hit him again about twice, I think, while I was there. I never heard

Jones make any comment about it, nothing only he come back and sit down about the time I walked off. He come and sit down on the wall around the well and said he was tired. He said he was tired, that he had been down with rheumatism or something.

I couldn't tell for sure what it was they were striking the body with. It was a short instrument, looked to be about eight inches long.

Mr. Byron Edwards, the Chief of Police, went to the sheriff. I do not know what he said. I couldn't understand what he was saying. I did not hear Kelley or Jones say anything else, only J. B. Kelley was trying to get them to stop. He was asking them to stop and come on. I said Kelley had the gun.

The only effort that was made about getting the gun was the sheriff asked him to give him the gun. He told him no, said I haven't got no shell for the gun, said the gun ain't no account nohow.

I did not see Screws hit him with that instrument or whatever it was. I did not hear Screws say anything else to Jones except to hit him again. If there was anything said by any one of them there about killing the negro I do not recall it. I wasn't there over a minute or a minute and a half and I walked on away.

Byron Edwards and I did not leave there together. When I left there I went into the Courthouse on the south side and went out on the west side and around and down the Elmerdell Road and back and I met up with the police around about the Suwanee Store. I mean Byron Edwards. The route I took going back home was not the most direct route. I went back that way because I didn't know what might happen and I was out there unarmed and everything and I didn't want to be in the open if any shooting was done.

When I approached the scene of the activity that I described these defendants were talking a little loud but I

don't know and I wouldn't say that there was any profanity. The sheriff, Mr. Screws, looked like he was mad to me. I never paid so much attention to him to see whether anything else was wrong with him or not.

It looked like Sheriff Screws undertook to kick or stomp this body on the ground one time. I don't know which you would call it, kick or stomp. He undertaken to but never done it. The body was on the ground all the time that I seen it. It was on the ground when they were beating him on the head or rather I won't say they were hitting him on the head for I wasn't close enough to tell where they were hitting at.

I won't be positive that I heard the sheriff tell Jones to kill him or any language to that effect. I was interviewed by the FBI Agents and made a statement to them. This is the statement I gave them and it bears my signature. After reading over the statement I can't recall and I can't be sure about that.

Cross Examination.

Mr. B. D. Edwards, the Chief of Police of the City of Newton, married my niece and I was boarding with him along in January of this year.

I was not subpoenaed before the grand-jury in this case. I do not know where Mr. B. D. Edwards is now.

Re-Direct Examination.

I was interviewed after the grand-jury met in Macon. At that time and prior to the time the FBI called on me I had never made a statement to anybody.

89 MRS. A. B. LEDBETTER, 14th witness sworn
in behalf of Government, testified on

Direct Examination.

My name is Mrs. A. B. Ledbetter. I live in Newton. I have lived there for the last 25 years, 20 or 25 years, I don't know. I know Mr. Claud Screws and Frank Jones and Jim Bob Kelley.

I was in Newton on the night of January 29th of this year when Bobby Hall was killed. I was aroused during the night. I live on the Courthouse square in Newton in the hotel. It is not so far from the public well. I do not know just how far. I could not give any idea in steps or yards. I could not indicate the distance by pointing out any object. I do live within 50 or 100 yards of the well.

I do not know just exactly what time of the night I was aroused. It was getting late, I know. It was after midnight. Noise was what aroused me over at the well. It was just carrying-on. I can't say just what I mean by "carrying-on". It was cursing and loud talk but no other sounds. I can't say how many there appeared to be.

I got up and looked out toward the well and I saw them over there. I do not know what they were doing. I could see them.

Q. What did you see them doing?

A. I couldn't say.

I do not know how many men there were out there. There were several. I couldn't say how many there were.

Q. Well, were there two or three or four or more or less?

A. Well, something like that but I couldn't say for sure how many there were. I saw one of them leaning over hitting this man. The man was on the ground. That went on out there for some time, I should think as long as 30

minutes. I suppose the man was on the ground all the while but I didn't stay at the window all the time.

All of them out there were using profanity, I think. Not repeating the profane words, I do not recall anything else I heard said about there by any of them. I just heard them hollering and talking. I heard somebody say "Hit him again." I heard some one say "Hit him again." I heard that statement several times. I do not know who was saying that. That was at the time I saw somebody leaning over hitting the figure on the ground. I could not tell what they were striking him with. I can't say whether it was a small object or long object or what.

I could hear the licks. I can't say what they sounded like.

My husband was at home that night. He did not get up at the same time I did. I called him and he then got up. He got up and he went out on the porch, so I went out to the door and got him to come back. I think he had started over there to where the commotion was but I am not for sure. I went out on the porch and stopped him. He called up the policeman. He did not get the policeman. His wife, I think, answered the phone.

I heard a gun fire out there that night. It was a good while after I first saw these parties beating the man on the ground before I heard a gun fire. I can't say how long it was. It was something like 20 or 30 minutes. The gun fired 20 or 30 minutes after I saw them beating a man on the ground. It was just before the beating was over with out there that the gun fired. I do not know whether they were still beating the man on the ground at the time I heard the gun fire or not. I had left the window. The noise died down and subsided soon after that, I think. The noise did not go on so long after I heard the gun fire. I

can't say whether the shot was from a pistol or a shotgun. The gunshot sound was after my husband had called the police.

(No cross examination.)

92

MR. A. B. LEDBETTER, 15th witness sworn in
behalf of Government, testified on

Direct Examination.

My name is A. B. Ledbetter. I live in Newton. I am the husband of the lady who just left the stand. I was in Newton the night of January 29th of this year when Bobby Hall was killed. I was awakened that night by my wife about 1:15. The time there then was the same kind of time that we have here now, the time we now have. I have a farm there in one mile of Newton and I work with the Holt Mule Company, been with them 20 years.

On this night when my wife called me I got up. My room is the second room from the highway out there and I got up and went to the window. I would say it is 50 yards from my room to the place out there where this commotion was going on at the well. The lights were on out there, the one in front of my house and the one in front of the post office. I could see all right.

When I got up I went to the window and I saw it was three men on one. Well, I went out on the front porch. The one man was down on the ground and I saw it was three men on him beating him and I didn't know what in the world to do. In other words, I stood there and looked at it a few minutes and I come back in the house and went and dialed my telephone to the police and asked him would he come around there that there were three men around there killing a man and some lady answered the

telephone. Just as soon as I dialed she answered and said Mr. Byron had already gone around there. That was the policeman but I never did see the policeman.

I heard these three fellows say something when they were hitting this man. I just heard them say, "Hit him again, hit him again". That went on out there until about a quarter to 2:00. It went on for 30 minutes after I got to looking at it. The first thing I saw this man was on the ground and they were beating him.

All three of them beat him one at a time. When one would beat him a while the other one would take it and beat him a while.

I heard a gun shot out there about 15 minutes after I had gotten up and gone to the window. It was after I had called the Chief of Police that I heard the shot. It was one shot or one shot is all I heard.

There was a car standing just this side of the well parked into the sidewalk and one man got in the car and drove around the block and the car stopped over there in front of the Sing Oil Company and blew and then he come back around and parked and while he was gone around two men drug this fellow away, dragged him away. They just took hold of his legs and drug him off. They dragged him from the well to the Court-house, dragged him up the sidewalk and into the Courthouse. I saw them do that. I do not know what two men it was.

I saw the pool of blood there the next morning. I would say it is 30 or 40 steps from the well and the pool of blood to the Courthouse. I went out to the well the next morning. I did not go in the Court-house. I did not follow the trail of blood into the Courthouse.

One of the three men drove off in the car and the other two men drug him off into the Courthouse. I did not see anybody kick him while he was on the ground. I would say I witnessed the beating out there 30 minutes. I could hear the licks and I could see them reach down and hit

the man on the ground. I could hear the licks. I heard a groan when I first got up but he didn't groan long. They kept on beating him after he quit groaning.

I saw the pool of blood the next morning. It was a pretty good size pool, I would say at least a place 3 x 4, three feet by four feet. I could not tell what sort of an instrument they were beating him with from my house. It looked like it was a blackjack because they had to reach over and hit him like that (indicating) I could see them reach over.

I say I saw all three of them beating him. They took turn-about. I couldn't say whose voice it was that said "Hit him some more". I couldn't identify the fellow by his voice.

There was no profanity except some of them said "Hit him again, damn him hit him again". I do not know how long that had been going on. My wife waked me up.

Cross Examination.

Mr. Screws and I have always been close friends. We always have been close friends, personal friends. I am just telling what I saw. We are supposed to be friends. He never has done anything to me and I never have done anything against him.

Q. You just pass and repass though and that is the extent of your friendship?

A. We are friends, I reckon.

Q. Don't you know that the extent of your friendship is just passing and repassing?

A. He never has done anything against me and I never have done anything against him.

There is a street light right in front of the hotel. That street light is some 20 steps from the doorsteps of the hotel to the right, just across the highway. Then there is

another street light straight across to the post office. I mean over to the post office. This light was on. Both of the street lights were on that night. I couldn't have seen all I saw if they had not been on. I paid particular attention to the light that was on over at the post office and I know that it was on. I do not know that the light over at the post office is shaded out of the Court-house square by two oak trees. The light comes through an oak tree but you can see. You can be on my front porch and see the water run out of the well at night. The oak tree to the right of the light looking toward the hotel porch might shade the light but you could see all right. There were no leaves on the tree at that time of the year. In other words, you can sit on my front porch and see the light shining just like it is right now and leaves are on the trees now. So, of course, you can see with the leaves off. You can see whether the leaves are on or off, it doesn't make any difference. I do not say that you can see from the light that was in front of the hotel. From the light in front of the hotel you could not have seen what was going on and if the other light had not been on I could not see what I have testified about.

Re-Direct Examination.

The thing was in plain view to me and plainly visible. I was asked how long I witnessed this commotion out there, this beating. I got up at quarter after 1:00 because I went back in there and when I went back in to use the telephone to call the policeman it was 20 minutes after 1:00 then and when I left the front porch and got on the inside of the house I left the front room and got on the inside of my room in about ten minutes, I guess, the clock struck 2:00.

The gun fired about half past 1:00. I had been up about 15 minutes when it fired, when I heard the gun fire. I

do not know whether it was a pistol or shotgun or what. I had witnessed the beating there for 15 minutes before the gun fired.

96

MRS. OLLIE JERNIGAN, 16th witness sworn by the Government; testified on.

Direct Examination.

I am Mrs. Ollie Jernigan. I live in Brunswick right now. In January of this year I was living in Newton. I was living there the night that Bobby Hall was killed, on January 29th. I lived on the east side of the Courthouse square in Newton. I would judge that is about 50 or 75 yards from the well.

I was in Newton at home that night. I was aroused during the night about 12:30 or 12:20 when I first heard it. I heard a lot of loud talking in front of my house and toward the well, toward the Courthouse square. I couldn't tell how many people were talking. I could see them moving out but I couldn't tell just how many people there were.

I had not gone to bed at the time. My husband left about 11:00 o'clock to go to work. He was working at Darr-Aero-Tech here at Albany. I had not retired when I heard this noise.

I went to the front door and fastened it. We were there by ourselves and I heard this talking and I opened the door and I could hear all this talking and these terrible licks. So, I closed the door and went to the window and I could see people moving about but I could not tell how many people.

I heard some profanity out there. I couldn't tell exactly whether it was from more than one person but I imagine it was from more than one person. When I went to the

window and looked out there toward the well, I just saw people moving about and I couldn't tell exactly what they were doing but I could hear some awful licks and I just judged that somebody was getting a terrible beating or something. The licks sounded like car doors were slamming. From where I was standing I could not see the motion of the licks being inflicted by those moving around. I heard several licks.

I really do not know how long that went on out there. I went back in my room and then I heard a gun shot and after I retired I still heard the licks. It was just a few minutes after my attention was attracted and I heard the licks before I heard a gun shot. It was not over ten minutes.

I couldn't tell exactly whether the person who was being hit or beaten was on the ground or not. I could tell it was from the same direction. I do not know how long the entire transaction lasted from the time I was first attracted, as I was so excited but it seemed a long time to me. I would say it was 30 or 40 minutes or maybe longer. I did not go back to the window and watch them any further. I didn't go back up there any more. I had already gone back to bed when I heard the gun fire. After I went back to bed I do not know how long the licks continued. It was a good while.

I recall some particular language that was uttered out there in connection with the beating. I could hear him say, "Hit him again, hit him again" and use profanity. And after I heard that, I heard more licks. It was after that that I heard the gun shot.

Cross Examination.

At that time I lived in the home owned by Mrs. Livingston. Being on the porch of that home my view to the artesian well would not be obstructed by the store build-

ing. There is not any part of the porch that your view would be obstructed of the well, the artesian well. I do not mean that you could sit on any portion or any part of the Livingston home porch and see the hotel but you could see the well. I would think you could see the well from any point on the porch of the Livingston home. I am sure I could. I am positive that I could and that the Radford store building would not obstruct your view at all.

I said that I went back in the room and looked out the window and saw some persons out at the well. I saw an automobile. The automobile was beyond the well, parked between the well and the street light, that is the street light in front of Mr. Ledbetter's; and between me and the parties at the well there was no obstruction whatever. I just don't know whether the light in front of the post office was on that night or not. It seems to me it was off. It could have been on but I was just so excited I don't remember. I could still see though.

It is not true that if the light in front of my home or in front of the post office, if it had been on, that the reflection from the light from the window out of which I was looking would have blinded my view as to any object at the well. In other words, the light at the post office, if it had been on, would not have blinded my view to the well. It still wouldn't blind me because the shrubbery around the house would cut the view of the light at the post office. I say the shrubbery around the house, that it wouldn't blind me at all that I could still see out of the window. The shrubbery would prevent the reflection of the light. The shrubbery was high enough at the window out of which I was looking to obstruct the light of my room but it still wouldn't cut the view to the well off. I just do not know about the light in front of the post office. I just don't remember about that light. It could have been on or off. I thought it was off, I was just so excited, I guess.

I am definite as to the automobile being beyond me and

between the parties at the well and the hotel. It was parked between the well and the street light and that is between whoever was at the well and the hotel, but I could still see.

99 MR. J. H. JERNIGAN, 17th witness sworn in
behalf of Government, testified on

Direct Examination.

My name is J. H. Jernigan. I am the husband of Mrs. Jernigan who just left the stand. I was not in Newton the night that Bobby Hall was killed at the time he was killed. I was working the third shift and I had to be at work at 12:00 o'clock. I do not remember what time I left Newton to go to my work here in Albany. I left prior to that time. I left prior to any disturbance out there in the square.

The next morning when I came home from work I passed by the well there at the public square. I saw blood out there around the well. I saw a lots of blood there and I saw a shotgun shell, a red shotgun shell. I could also tell where something had been drug off. It appeared to have been drug off through the Court house. It was from the pool of blood that it started and proceeded toward the Courthouse. I followed that trail up to the Courthouse and I went on in the Courthouse. There was blood all the way up the trail to the Courthouse. I did not follow it any farther than the Courthouse.

I know Sheriff Screws. I have known him since 1924. After this occurrence down there at Newton Sheriff Screws had some conversation with me concerning it. I do not remember the date. I saw him there in town. It was after the FBI agents had gone down there.

I had left the house and started over to the drug-store and as I passed his car he called me. He was parked in front of Radford's Store. He told me he wanted to talk to me. So, I walked over to the car and he told me to come on around and get in. I got in the car and he says, "Herschel, you know those FBI men are down here investigating that case?" He said, "Well, I understand that your wife saw it?" I told him "Yes". He says "Well you know we have always been friends and I want us to continue to be friends". I told him "Well, I hoped we could." That was all that was said. He mentioned to me that my wife had had a good deal to say about it. His language about that as well as I can quote it was, he told me that he understood that my wife saw it and had had a good deal to say about it and that we had always been friends and wanted to continue to be friends.

Cross Examination.

Q. Mr. Jernigan, refresh your recollection please sir, and see if this is not what Mr. Screws said to you: He asked you, said "Herschel, I would just like to know what your wife knows about it" and you said to Mr. Screws that she don't know anything that will help nor hurt you, wasn't that about what he said and what you said?

A. No, he told me that he understood that my wife saw it and had a lots to say about it and that we had always been friends and wanted to continue to be friends; and I told him that I didn't think that my wife knew anything that would hurt him or either help him.

191 MR. E. M. ELLIS, SR., 18th witness sworn by
the Government, testified on

Direct Examination.

I am Mr. E. M. Ellis, Sr. I live in Newton, Ga. I have not been living in town but about a couple of years, hardly a couple of years yet but I have lived in the county about 27 years. I have been living in Baker County a long time. All except five years I have been living there in Baker County for twenty-seven or eight years.

I know these three defendants, Mr. Screws and Mr. Jones and Mr. Kelley. I remember the night of January 29, 1943 when Bobby Hall was beaten up there on the Courthouse square. My house is on the north side of the square right opposite the jail. I imagine it is about 100 yards from the public well on the square. Part of my house is in 30 feet of the jail.

I was woke up by the racket toward the square that night. It was kind-of hollering and taking on like somebody suffering. That's what I heard. As to whether I heard any profanity, I couldn't understand it hardly that far, I don't reckon but I could understand and I heard them say, "Hit him again or hit him hard" something like that. I just imagined it was somebody fighting, that it was a drunken fight. I say that because they some times have drunken fights in Newton. That was going on when I woke up. I don't think the racket continued but about maybe 25 minutes after I woke up.

I heard a gun-shot. I couldn't how long after I woke up before I heard the gun-shot but it was not but just a few minutes though, I don't suppose. I had heard the going on and had heard them say "Hit him again" before the gun-shot. It wasn't but a little bit after the gunshot before they quieted down in my recollection. They came to the jail next. I would say that the noise and the hollering

continued for several minutes after I was attracted to it before the gun shot. I imagine it was as much as 15 minutes.

I walked out on the porch. It was a pretty cool night and I located where it was at. I knew it was about the public well somewhere; and then I went back and wasn't but a few minutes until the racket all stopped and the car come to the jail. The car come right around from the well to the jail. I was not on the porch then. I went back to bed. I could not tell who came around in the car. I did not see the car or see anybody in it. I heard some voices out there talking. I couldn't say that I recognized any of the voices. I had heard the voice plenty of times but I couldn't say. I couldn't hear or understand anything that they were saying. They put somebody in jail when they drove around to the jail. I really do not know where they brought them from or how they got them there only by the blood that was there the next morning, the blood that came out from the Courthouse to the jail on the jail steps and across the alley there between my house and the Courthouse. There was a trail of blood from the Courthouse on to the jail.

I did not go around to the well right then but pretty early the next morning I did. I saw a pool of blood around there. I observed a trail of blood from that pool on up to the Courthouse.

I had gone back to bed when the car came around. I had gone back to bed when the ambulance came there and got the darky. I just had laid back down on the bed when this car drove up there that I referred to, the first car. I had just gone to bed.

(No Cross Examination.)

103

MRS. RUTH RHODES, 19th witness sworn in
behalf of the Government, testified on

Direct Examination.

I am Mrs. Ruth Rhodes. I live with my father and sisters north of the Courthouse in Newton. Mr. Ellis, Sr. is my father. I live there with him and I was living there in January of this year.

I remember the night Bobby Hall was killed or beaten up on the Courthouse square. I was aroused that night. I had gone to bed and gone to sleep. It was about 1:00 or 1:30 or probably 2:00 o'clock in the morning when I was first aroused. I was aroused when I heard a loud noise out on the street and a gun fired about 2:00 o'clock. It sounded like a lot of just loud talking and cursing and excitement on the street. Of course, I didn't pay much attention to it because it is just a usual thing in Newton for there to be excitement on the street. I would say it went on about an hour after I woke up. I do not know how long it had been going on before I woke up. I would say it was five or ten minutes after I woke up and listened to the noises before I heard a gun-shot. After that, they just stayed at the well for about 30 minutes, I imagine, after I heard them and then they came around to the jail and parked an old car right outside the front. You see, we live right next to the jail and they parked this old car, just parked it there with the motor running. I do not know whose car it was but I know it was an old model. It sounded like a Model "T" or something. I think Jim Bob Kelley has a car. The car he had at that time was some old car, I don't know the model. And then I got up when they came around to the jail, I got up out of the bed and went to the window and I saw Jim Bob Kelley and Frank Jones and I couldn't tell what it was, it was a bulk of something carried in the jail. I saw them go in the jail

and then come out and the car motor was still running and I recognized Mr. Screws out at the car and they were talking loud. He was. I would call it profanity that he was using. I didn't recognize any words but it was extremely loud.

The best I could see from my window Frank Jones had this bulk, I think, by the shoulder and Jim Bob Kelley by the feet maybe, just carrying him along. He was not walking at all. I did not hear the person that they were carrying make any sound at all. I heard them go in the jail.

I did not see Sheriff Screws at all. I did not see the Sheriff. I recognized his voice out at the car and on the front of the jail but I did not see him at all. I saw Jim Bob Kelley and Frank Jones very plain. I recognized them at once. I do not know how long they stayed in the jail after they carried him in there but probably about ten minutes.

After they carried this person to the jail, shortly after they carried him to the jail I didn't know at the time that it was an ambulance—I thought it was Mr. Screws' car—but something drove up and blew the siren just lightly, drove up to the jail and then Frank Jones and Jim Bob Kelley brought the negro out of the jail and put him in this ambulance or whatever it was—I didn't know what it was—and then they left.

I live in Newton now but I do not work in Newton. I work in Camilla for the GFA Peanut Association. I operate the PBX switchboard for the GFA Peanut Association. My sister also works there.

(No cross examination.)

105

MISS ALMA ELLIS, 20th witness sworn in behalf of the Government, testified on

Direct Examination

My name is Miss Alma Ellis. I live with my father at Newton there. I am sister of Mrs. Rhodes and the daughter of Mr. E. M. Ellis, Sr.

I was at home on the night of January 29th, the night that Bobby Hall was beaten up there on the Court-house square. I was aroused that night and the first thing I heard was an automobile, an old model car. I was awakened by that at first. I was awakened by an old model automobile and as soon as I raised up in bed to see where the car was, it sounded at a distance and I raised up and looked up but I still didn't see anything, but I heard voices. I couldn't tell where the voices were but they were back towards the Courthouse. I just lay back down and in a few minutes, or I don't know how long it was, this car came around the Courthouse. But before that I heard a gun fire. Repeating, I was awakened by an automobile, an old model car and when I raised up in bed I heard voices but I still could not see anything because when I looked out I did not see anything out of our window, and after I lay back down I heard a gun fire. I don't know, it probably was two or three or maybe 25 minutes later because I was about half asleep, I guess; but I heard the gun fire and after the gun fired I know it wasn't over ten or fifteen minutes before this old model car drove around in front of our house, passed our house to the jail and the motor kept running; and then we heard more voices and after the voices, I heard the jail door close twice; and then I relaxed and went back to bed; and in a few minutes I heard the voices again, and when I looked out the window that time I saw an automobile, I wouldn't say what kind of car it was but it was a new automobile.

Just the back end of it was all I could see and at that time I heard voices and that was Mr. Screws' voice, I am almost sure, because there were three voices that I could hear distinctly but the other two I did not recognize.

I could not recognize anything that Mr. Screws said, with the car motor running I could not understand anything that was said. I wouldn't say whether that was the ambulance or not because I could just see the back of it. Just before that I heard the siren blow out about the corner and I thought maybe they were bringing somebody into jail because I thought probably it was the sheriff's automobile. That's what I thought it was when I saw the back of the car but I wouldn't say that it was his car. I wouldn't say what it was because I could just see the back of it and I didn't get up far enough to tell.

(No Cross Examination.)

107

MISS ANNIE ELLIS, 21st witness sworn in behalf of the Government, testified on —

Direct Examination:

My name is Miss Annie Ellis. I reside with my father and sisters in Newton. I was there in January of this year. I remember the night that Bobby Hall was beaten up there on the Court-house square, on January 29th of this year.

I was aroused that night. I do not recall just what aroused me but the first thing I heard was noise, groaning. At first, I thought it was dogs and I kept listening and I heard voices and I heard loud talking and heard an automobile motor running. At first, I just couldn't tell from what direction the noises were coming because I was in bed. I did not get up at that time. I listened for a while.

My bed is—we have two windows in our bedrooms practically as large as this one and I just raised up and pushed up one of my windows. Of course, things of that kind are not unusual because I had been disturbed three nights in succession with just such carrying on and I just didn't apparently think anything about it at first. I just thought it was a drunk as there had been drunks for two or three nights doing the same thing and it was just the usual thing around there, just the usual round that they usually make.

And I raised up in bed and pushed my window up and I kept hearing this noise and decided that it was somebody instead of anything else and then I decided—well it kind-of quieted off for a few minutes and then I heard a gun fire. I couldn't tell just exactly how long after I woke up it was before the gun fired. I imagine it was 30 or 40 minutes maybe. I had in mind who it was. I knew about who it was making all this noise. The noises continued after I heard the gun fire for some little bit. I got up and looked out but I didn't see anything, but I could still hear it and I knew it was on across town some distance from us, and I went back to bed and in a few minutes the noise came closer. Then, I heard somebody go in the jail and out because the jail was right next to our bedroom almost. I did not get up to see who it was going in and out of the jail at that time. In a few minutes I heard the automobile come back and I heard the siren and I thought well I reckon they are probably winding up and maybe taking off for the night. And I lay back down again and in a few minutes I heard the jail door and at that time there were two automobiles pulled off. Of course, since that time I have heard one was the ambulance but at that time I didn't know that it was an ambulance. I looked and saw two men come out of the jail. I know who they were. They were Frank Jones and Jim Bob Kelley. They came out of the jail and I heard others

talking and there must have been two people in the shadow of the light. I recognized the voice of one of them, that of Mr. Screws, the sheriff. I have known Mr. Screws for fifteen or twenty years. I could not tell what he was saying because the motor of the car was running and I couldn't understand.

(No Cross Examination.)

108 MRS. OLIVIA EDWARDS, 22nd witness sworn by the Government, testified on

Direct Examination.

I am Mrs. Olivia Edwards. I am the wife of Hoke Edwards. On the night of the 29th of January of this year I happened to be at the jail in Newton, Georgia. I was not in jail as a prisoner. We were there because we thought our husbands was going to leave in a few days and we got permission to go in and stay with them that night. The Sheriff gave us permission to go in and stay with them, gave permission to me and Edgar Bailey's wife. We girls were spending the night in jail with our husbands who were prisoners and had been sentenced.

I did not see Sheriff Screws that night, did not see Frank Jones and did not see Jim Bob Kelley. Somebody came into the jail. Sheriff Screws and Frank Jones came in and I couldn't, I didn't know who the other one was but I heard since that it was Jim Bob Kelley. They all came to the jail that night. The Sheriff opened the door. I do not know whether the others were with him or not. I guess they were. That is what woke me up is when the sheriff opened the door.

My cot was placed on the left as you go in the jail right there at the door. The cots of Mrs. Burke and her hus-

band were in another portion of the jail further back. I was not awake when the Sheriff came there but I woke up when he came in. The sheriff said "Bring him on in." I do not know who he was talking to. He didn't say. When he said "bring him on in", they brought him on in. Frank and the other man brought him in, Jim Bob Kelley or whoever the other man was.

I do not know who it was they brought in. I guess it was a human being but I didn't even see him. I couldn't say whether it was a white man or a negro because I didn't even look. I didn't say I looked. My cot was right there where they passed by it. I do not know how they brought him in. I didn't look. I was laying down and I didn't even get up. I mean to say that I didn't even look at the man.

As to whether the man brought in was handcuffed or not, I heard them talking about it that he was, that he was handcuffed.

It was these three men that brought him in there that were talking about him being handcuffed. The sheriff was there. I didn't hear them say anything about taking the handcuffs off or leaving them on.

After Jones and the other man brought the man in there Sheriff Screws and the two other men went out. After that Frank Jones came back in there. I do not know just how long it was. I have forgotten about the handcuffs.

After Jones and this other man brought this party in there and left it, Edgar Bailey inside of the jail moved the body. They put it there in the room where he and his wife was and he just pulled him on in a cell.

Q. Now Mrs. Edwards, since refreshing your recollection, I asked you earlier who it was that was dragged into the cell when the sheriff said let him in and you said you didn't see who it was, that you didn't see him—Who did they bring in there a white man or a negro?

A. I don't know sir.

Q. Beg pardon?

A. I don't know sir.

Q. You do not know?

A. No, sir.

Q. Now Mrs. Edwards, when the Sheriff told them to bring him in, did you hear Mr. Frank Jones say anything?

A. Yes, sir.

Q. What did he say?

A. He said, well we have brought him four miles, we just as well bring him on in.

Q. Brought him or drug him?

A. Drug him.

Q. Said we have drug him four miles and just as well bring him on in?

A. Yes.

Q. And then they did bring him on in?

A. I guess so, I don't know.

Q. I will ask you, did Frank Jones come back in and take any handcuffs off of this negro?

A. Well he came back in. I do not know just what he did.

112

MR. HOKE EDWARDS, 23rd witness sworn in
behalf of the Government, testified on

Direct Examination.

My name is Hoke Edwards. I was in jail at Newton on the night of the 29th of January of this year. I had been sentenced there and was expecting to be sent away some time soon. My wife was permitted to spend the night with me there and another man's wife was also permitted to stay there.

To tell you the truth I do not know what happened in the jail there that night, only I know they brought some-

body in there but I don't know who it was or nothing at all about it. We had the lights off in the jail. The lights were not turned on. The light on the outside was on but the lights on the inside were not.

My wife and I were right in the front on the left side. Mr. Claud is the first one that came to the jail. When he came in I don't remember what he said. If he said anything, I do not remember exactly what he said. I had to get up and move my bed for him to open the door because I had placed two of the cots together. I moved the cots before anybody came in. The sheriff did not tell me to move them. I do not remember whether he said anything or not. When he pushed the door back, it didn't open like it should open and I just moved one cot back. Then, two more fellows came in, Frank the best I could tell and Jim Bob Kelley. They had hold of somebody. I do not know whether they were dragging anybody or how because I couldn't see. I walked on in the back. They were not in there but just a minute or two and they walked on out. If anything was said in there by any of them, I do not remember it.

I couldn't tell whether the man they brought in was handcuffed or not. It was dark and I couldn't see. I did not move the body. This boy that was in there with me, he moved it but I do not know exactly how he moved it or nothing at all about it. I just know he moved it.

I seen Frank Jones when he came back the second trip. I do not know whether they took the handcuffs off of him then or not because I was in the front and he went on in the back.

Q. Mr. Edwards, did you make a statement to the FBI about this matter when you were interviewed?

A. I talked to them.

Q. Well, did you sign a statement, look at that statement?

A. Well, I can't read much and I wouldn't know.

Q. Well, suppose you read the statement there, read it from beginning to end, to yourself there I mean?

A. I can't read this.

Q. Mr. Edwards, I ask you again whether or not Mr. Frank Jones took the handcuffs off of this body that was brought into the jail?

A. I couldn't say because I don't know sir.

Q. You mean you do not know if you do not remember?

A. I do not remember whether he did.

Mr. Short:

We have no questions.

114 MRS. MABEL BURKE, 24th witness sworn in behalf of the Government, testified on

Direct Examination.

I am Mrs. Mabel Burke. On the night of the 29th of January of this year I was spending the night with my husband in the jail there at Newton. I did not see Sheriff Screws come into the jail that night. I was asleep and when I woke up my husband was dragging the negro in the cell. He was bloody some. And later on Mr. Jones came and took a pair of handcuffs off of him. That was after my husband had dragged him into another cell.

Q. Did your husband drag him from the hall into the cell, Mrs. Burke?

A. He was back in the back where we were at and he didn't drag him but just a little piece. He put him in this cell to get him out of my sight. It wasn't very long after

that before the ambulance came. I do not know just how long it was but it wasn't very long.

(No cross examination.)

115 HENRY NEAL (Col), 25th witness sworn in
behalf of the Government, testified on

Direct Examination.

My name is Henry Neal. I live in Albany. I work for Mr. C. D. Kenney now. In January of this year I was working for Walter Poteat. He is in the undertaking business.

I remember the night that I went down to Newton and got Bobby Hall, which was about the 29th of January of this year as near as I can come at it. I do not remember the date. I do remember the night I went after him.

About 1:30 or 2:00 o'clock the nurse at the hospital, I do not remember, I do not know what nurse it was called me and asked me could I go down to Baker County, to Newton, to get a man that was down there hurt. I told her "Yes ma'm. I could go", and I got up and dressed and went around on Jefferson Street whether the other boy, Manley Poteat, was and picked him up. He is the son of the owner of the undertaking place, and he and I went to Newton. We drove right in front of the jail. We went down in the ambulance and we stopped in front of the jail-house with the ambulance. I was driving and I got out and Mr. Frank Jones said "Henry, we have got one in here for you to carry to the hospital." I had known Mr. Frank Jones for about three years because I worked there in Newton for about three years. He did ask me what business I was in. He said "Henry, what are you doing now?" and I said "I am in the undertaking business."

And he said "Well, we have got one here for you." I said "Who is it?" He didn't say anything and he went and opened the jail door and when he opened the jail house door, I said who is this? He said "O, you know him." I said "No, sir, who is it sho nuff?" The one that was in the jail house was bloody. And I says to him, "Who is it sho nuff?" And Mr. Bailey, he said, I do not recall his first name but Mr. Bailey, I know him when I see him—we all called him Mr. Hot-Shot Bailey. He was in there and he says "That's Bobby Hall, Henry, you know Uncle Willie's Bobby." I said "Yes, sir."

Without going into all of the conversation Manley and I came out of the jail with Bobby and Mr. Jones helped us. I do not remember Mr. Kelley. We found the man in the jail-house in a cell crawling on his knees. I do not remember whether there was any blood in the cell but the boy's clothes were bloody. Yes, sir, there was blood in the cell. We brought the cot in and picked him up and put him on the cot and put him in the ambulance. I then cranked up and backed out and come on to Albany.

I remember how he was dressed when we got him in the cell. He had on a pair of pants and a pair of shorts and one sock. He didn't have on any shoes at all and no shirt. He was unconscious when we got there.

Q. Now Henry, did you notice the back of his head?

A. After we taken him from the hospital back down to the undertaker.

Q. I mean down there at that time?

We loaded him into the ambulance and we brought him to the hospital here in Albany. I went up into the hospital. I stayed at the hospital until after he was dead. Dr. Barnett said he was dead and then we loaded him back up and brought him to the undertaker, in about 30 minutes as near as I can come at it. He died in about 30 minutes after we got him to the hospital as near as I can come at

it. Manley and I took his body then and carried it to the Poteat Funeral Home.

When we got him at the funeral home we laid him out. We put him on the table. His body was bloody. His head back there, right in this part of his head (indicating) was soft. It was soft and behind the left ear was a hole. His eyes were closed. His face was swollen and his eyes were closed when I got to Newton.

I said the undertaker's name is Walter Poteat. Walter was not there when we got there with the body. Nothing was done to the body before Walter got there, nothing at all. We undressed the body down at the undertaking establishment. When I took the clothes off of him I did not turn them over to anybody. We have a shelf that we put clothes of dead people on and we put his clothes on the shelf. I did deliver the clothes to somebody later on but it wasn't no time soon after then. It was later on in the year. I delivered the clothes, I don't remember who it was but it was some gentleman I delivered the clothes to. I delivered them to the FBI. I remember this FBI Agent here. I remember his face, Mr. Calhoun. When I turned them over to Mr. Calhoun they were in the same condition as when I put them up except that they had probably dried out.

These are the trousers I took off of Bobby Hall because I wrote my name on them myself. There is my name written on them. He did not have on any shoes when we got him down there at Newton. He had on one sock. The one sock that he had on must have gotten mixed up with some of those other clothes that we had there. I do not remember whether I give the FBI agent that one sock or not. The pair of shorts he had on must have gotten mixed or went with them other clothes because I know that he had on a pair of shorts. These are the trousers that he had on.

(No cross examination.)

117 MANLEY POTEAT (Col), 26th witness sworn
in behalf of Government, testified on

Direct Examination.

My name is Manley Poteat. My father is the undertaker here. I went down to Newton with Henry Neal to get a body on the 29th of January of this year. Henry came by and got me. I imagine it was around 2:00 or 2:30. I didn't pay any attention to the time, told me he had call to go to Newton. On the way down there he told me he was going to the Newton jail to get a patient to carry to the hospital.

I didn't know any one down there at Newton. Henry knew them all. Mr. Jones, I believe it was, he came over or spoke to Henry and Henry called him "Mr. Frank". Mr. Jones asked Henry was he in the undertaking business. Henry told him yes, sir, and he told him he had one for him.

We went into the jail and got the body. There was blood in the cell there where the body was. The floor of the cell was bloody. There was a pool of blood on the floor. Henry and I raised the body up or lifted it up. I slipped when we were trying to raise that body, slipped on the blood. I really do not know how large the pool of blood in the cell was. I just know there was a large pool where the fellow was crawling around on his all-fours. He was unconscious.

We carried him from there to the hospital. I slipped down in the blood trying to raise him up. Henry and I then took him from the hospital to the undertaking establishment after he died.

(No cross examination.)

118 MRS. MARY DANIEL, 27th witness sworn in
behalf of the Government, testified on

Direct Examination.

I am Mrs. Mary Daniel. I am connected with the hospital here, the Phoebe-Putney Memorial Hospital. I was on duty on the night of January 29th of this year. A negro by the name of Bobby Hall was brought in there that night around three o'clock in the morning.

He had some head injuries and some brush-burns on his body, brush-burns, friction burns over his body. He died in about 50 minutes after he came into the hospital. He was unconscious when he arrived at the hospital. He was in a dying condition when he got there.

I brought the hospital records with me. This is the only record we have at the hospital. The record discloses he had a depressed fracture of the right temporal region, friction burns over the arms, chest and face, completely unconscious, considerable loss of blood from right temporal region. Dr. Barnett saw him before he died. Dr. Barnett came in the hospital in not more than 15 minutes after the patient was brought in.

The body was bloody, especially around the head. That is what I noticed mostly was the head. The body generally was bloody and his clothes bloody, what he had on was bloody. He didn't have a shirt. He was not undressed. He had on his trousers. He was not washed at the hospital.

119 DR. J. M. BARNETT, 28th witness sworn in
behalf of Government, testified on

Direct Examination.

I am Dr. J. M. Barnett.

(Qualifications admitted.)

I live here in Albany. On the night of January 29th I was called to the hospital here to see a negro by the name of Bobby Hall. The sheriff of Baker County called me, Sheriff Screws. The negro was already at the hospital when I arrived there..

I found the negro unconscious with complete exhaustion from the loss of blood due to a fracture of the right side of the skull temporal region and I also found in physical examination friction abrasions on the arms and the chest and chin. By friction abrasions, I mean not fire burns, not raw surfaces but abraded surfaces of his arms, his chin and his chest. I could not say what caused those burns. They could have been inflicted by dragging him on the ground or on pavement or on pebbles.

He lived, I think, about an hour, I think the record shows, an hour or hour and 45 minutes. He died shortly after admission. He was never removed from the emergency room. All the work was done right in the emergency room. He was in fact really in a dying condition when I got to him.

His death, I am positive, was due to the blow in the right side of his skull. I would say that it would be almost impossible to give a direct answer to the question of whether this man with that blow, after the infliction of that blow, would have been able to stand up and walk, either assisted or unassisted. Many injuries that we have of that type and of that character, the patient can walk

for a short time but after the loss of blood, as he lost blood, it would have been impossible for him to walk, stand or even recognize any one at the time I saw him.

(No cross examination.)

120 WALTER POTEAT (Col), 29th witness sworn
in behalf of Government, testified on :

Direct Examination.

My name is Walter Poteat. I am in the undertaking business here in Albany. I have been here working at the undertaking business about fifteen years. I have been in business for myself five years. I have been a resident of Albany about sixteen years.

On the night of January 29th of this year or the early morning of January 30th the body of Bobby Hall was brought to my establishment. I got down that morning about 8:00 o'clock. I found the body in my morgue. Nothing had been done to it that I know of at all. It was still partly clothed. He had a pair of pants on him. I do not recall whether he had a shirt on or not but I know he had on a pair of pants. Nothing had been done to the body at all.

I did not recognize the body when I walked in. I did not know who he was. The body was bloody. When I went into the morgue that morning, of course, the boys told me they had somebody in there and Henry Neal he told me it was Bobby Hall. Of course, I did not know him, not in that condition just like he was. So, the first thing I did was to pull off his clothes and get me some octagon soap and a hose and wash him real good, just scrub him real good all over. The body was bloody.

Before I washed him the body was bloody, had coagulated blood all over him and sand all over the blood; of course, and his hair was bloody and sand all in his hair: His body down through there was sandy and bloody with coagulated blood all over him, front and back and on the side, on his side and on his shoulders.

After I got him washed good I got some octagon soap and washed him, and my table is a drain table and has a big sink and I just washed him off and all the stuff went right off into the sink; and then I began to recognize who he was. I had not been able to recognize him before I washed him. I did not know who he was. I had known him before. I knowed him before this.

And, of course, I went to embalming him after I got him cleaned up and got his clothes off. I washed him off thoroughly and I examined the body. The injuries I found his body in, the first layer of skin was scraped off all on his chest, his face was blood-shotten, his eyes were blood-shotten and his side was scrubbed. By scrubbed I mean just as if he had been wallowing on the ground and scrubbed the first layer of skin off. The first layer of skin was rubbed off; and his right ear was cut in-two. This meaty part here (indicating) was cut. His left ear there was a hole in his left ear just below here (indicating). And the back of his head was crushed in and, of course, when I raised the axillary artery to inject my fluid, I finds the left ear that the brains began to run out of his head, out of his left ear on the left side. And of course, in doing that I stopped injecting the fluid and went to examine his head just to see what was wrong with it. I run a trocar into his right ear, a long instrument, a silver instrument about that long (indicating), I ran it into the right ear up above the back part of his cranium up to the point of the middle of his head. Then, I brung it over on the left ear and carried it around and run it at the other point on the

left side of his head and I found all of this, the skin had left the skull and was just loose in there, just pieces. His skull, it had left the skin and was just pieces back there of his head. I could feel some movement of the bones of his skull. The bones were broken. The back of his head was broken, the skull was broken, his eyes were blood-shotten, both eyes were blood-shotten and his face was scarred up and he had a scar on his wrist. It was on his left wrist, I think it was. It was a fresh something, like he had just twisted his wrist, something, like that. It looked like something had twisted the skin of his wrist on his left wrist. It was a very small place. You could just tell that the first layer of skin had been rubbed off. I am not familiar with handcuffs. I wouldn't say this place was about the size or the width of handcuffs. I do not know the size of them. I have seen them. This mark on his left wrist that I have described was distinct. It went all the way around the wrist, just the first layer of the skin was rubbed off.

On his left leg there was a skinned place, and on his two chests here the skin was rubbed off, on his side the skin was rubbed some and his shoulders were rubbed and his face, his jaws were rubbed, under his chin, both jaws and also his forehead.

I was present when some photographs were made of the body. These are the four photographs that were taken of the body. All of these photographs were taken on the same table. You see we had cleaned him up then and had undressed him. These pants were just laid up on him. They were just laid on his legs to just protect the lower extremities; and this one is the same way only we turned him just a little bit. The man tried to get that ear. It is the same photograph, all four of them. All four of them are photographs of Bobby Hall taken in my establishment the morning I embalmed him.

The injuries on his chest, the skin rubbed off, I could see that before I washed him. You could see that blood and dirt. There were no other skinned places that showed up after washing him that you couldn't tell before washing him. You could discover all of them but, of course, you couldn't tell what they were, but you could tell the skin had slipped. Now, when he was washed, of course, all of these injuries were clearly visible.

(No cross examination.)

124. MR. ROYSE HINSON, 30th witness sworn in behalf of the Government, testified on

Direct Examination.

I am Roy Hinson. I am Dougherty County police officer. I was on the county police force in January of this year.

I went down to the Poteat Funeral Parlor here in Albany on or about the 30th of January of this year when there was a negro, Robert Hall, in there. I went down, I am not sure about the date but I went down on Sunday after this was supposed to have happened on either Friday night or Saturday morning. I saw him Sunday night.

As to why I went down there, I was patrolling and I rode down to the terminal station and there were a good many negroes gathered up together and they were crying on the sidewalk; so I just drove up and asked them what the trouble was and after that I went to the funeral parlor and found this body.

I looked at the body and made some examination of it. The body was lying on the table and it had been washed and had a sheet over it and Walter Poteat pulled the sheet back and I looked at his head and they were telling me

different stories about how it happened; so naturally I was interested in it. I looked at his head and his right forehead was bruised, his ears, the back of his head and on his right side had a bruised place about as wide as my three fingers, looked like the skin had been rubbed off and then part of his chest looked like sand burns.

His wrist had imprints. Of course, this body had been embalmed, wasn't any torn places on his wrist but it had a double mark imprints around his arm.

I have been an officer about a year and a half. I am familiar with handcuffs. These imprints were very close together and went around his arm, either arm, both arms had imprints but no broken skin on either arm.

Q. Well, would that be the kind of a mark that handcuffs would make?

Q. Will you just illustrate how handcuffs are used on individuals?

A. Well, an ordinary paid of handcuffs, as you see, has two ridges on the side, that is when you put it on, it works through this (illustrating with pair of handcuffs) and if a pair is put on and mashed down, or either put on loosely, if the prisoner should waver, naturally it would leave a double imprint on his arm. Of course, I do not know whether they were handcuffs or not because I did not see them on him.

These marks that I saw on these two wrists were double imprints.

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MR. JAS. L. FAIRCLOTH, 31st witness sworn in behalf of Government, testified on

Direct Examination.

I am James L. Faircloth. I am a member of the police force here in Albany. I have been on the force two years

the 17th of this coming January. I was in service in January of this year.

I went down to Poteat's Funeral Home about the 30th of January and looked at the body of a negro named Bobby Hall. I examined that body, or looked at it and observed the injuries on it. I observed his wrists and there was some marks on his wrists. I couldn't say what put the marks there but on each wrist, there was a mark, looked like the wrist or arm had been corded. That was on each wrist.

I believe it was Saturday afternoon that I saw the body. It was after it had been embalmed. The imprint was still there. I looked at his head. The back of his head, right in the back of his head was crushed, the skin wasn't bursted but it was soft like cotton and along on the sides of his face, I saw—on the sides of his face and ears there were some scars and scratches on each side of his head. I said his head was soft. There was a couple of skinned places right on each side of his chest, I reckon, approximately the size of man's hand.

(No cross examination.)

127. MR. PRICE WESTBROOK, 32nd witness sworn in behalf of Government, testified on

Direct Examination.

I am Price Westbrook. I am a member of the police force here in Albany. About the 30th of January or sometime around that date this year I went down to the Poteat Funeral Home here and saw the body of Robert Hall or Bobby Hall. I looked at the body. I just looked at it and saw the injuries about his head, chest and shoulders, his stomach and arms.

I made some examination of his wrists. I looked at his wrists. His wrists was skinned up, both of them had marks on them. The marks were wide, looked like double marks on both wrists.

Cross Examination.

It was Sunday night some time during the night when I saw him. That must have been along about the first of February. I do not remember the date. I do not know when he was carried to the undertaking parlor though.

MR. J. D. WHITE, 33rd witness sworn in behalf of the Government, testified on

Direct Examination.

I am Mr. Dillard White. I live down in Baker County. I do not have any business in Newton now. I used to have one there. I clerked for Mr. Hall down there last year. I had a place of business there in January of this year. I slept there in the place of business at night, only when I was out at the farm.

I remember the night that Bobby Hall was beaten up down there on the Court-house square. I was in Newton that night at the place where I slept. The next morning about five o'clock I was up and Mr. Frank Jones and Mr. Jim Bob Kelley called me and asked me did I have a fire. I told him I did. He asked me who was in there with me and I told him a certain person and I asked him who was with him and he said his sweetheart. Mr. Jim Bob Kelley was doing the talking. I then opened the door and Mr. Jones came in with Mr. Bob.

Mr. Jones was in fair condition. I call it. Mr. Jim Bob had drank a little bit. I could tell he had been drinking. By

fair condition I mean that he knowed what he was doing and everything.

I noticed some blood on Mr. Jones' boots. I asked them where they had been and Mr. Kelley said they had a big frolic around there and I ought to have been around to it; and they talked on and said there had been a killing; I asked them who got killed and they said you will know in the morning.

I said they did bring some liquor in. They didn't say anything further to me about what had happened up there. There was no description of the party that they referred to. They didn't refer to anybody, never did tell who had been hurt.

There wasn't so much blood on Jones' boots. He did have on boots. Mr. Jones did not stay there very long. He said he had to go home. Mr. Bob stayed there some time and finally lay down on the cot and went to sleep and I made by preparations to go out to the farm and I woke him up. He asked me to give him my keys and let him stay there that he would give them to somebody after I come back but I told him I wouldn't be back until after dinner and I couldn't do it. So, he left and went outside. That was between 5:00 and 6:00 o'clock in the morning when they left. It was about five o'clock when they got there.

(No cross examination.)

129 MR. JAS. P. WILLINGHAM, 34th witness.
sworn in behalf of the Government, testified on

Direct Examination.

I am James P. Willingham. I am just out of the hospital. That is the reason I am on a stretcher. I am just

out of the hospital. I live across the river on the Radium Springs Road in Albany. I have lived at Newton. I think I was living there in January of this year.

I was in Newton about the time or right after Bobby Hall was killed down there. I stayed there, I imagine, two or three weeks after he was killed and moved on up here, might have been a little more but something like that.

I know Frank Jones, Jim Bob Kelley and Sheriff Claud Screws. The day following the killing of Bobby Hall, I had some conversation with Mr. Frank Jones. I talked with him a little while over in front of Johnny West's liquor store Saturday morning after the killing was on Friday night.

Me and Frank has always been mighty good friends and I asked him about the thing, how it happened and so on, and he told me that the negro had a mighty good pistol and they taken it away from him and the negro acted so damn smart and went before the Court in some way trying to make them give it back to him, tried to make him give the pistol back; you see, and went to Robert Culpepper from Camilla, and during the time he asked the Judge something about making them give him his pistol back; and that they went out there that night with a warrant and arrested him and handcuffed him and brought him to town and the negro put up some kind of a talk about wanting to give bond or something to that effect and they beat hell out of him; then, that when they got him up to the well they whipped him some more and he died shortly afterwards. He said the negro attempted to shoot them at the well; said the negro attempted to shoot them at the well with a shotgun and said he hit him with a blackjack. Frank said he hit him with a blackjack pretty hard and I asked him about how in the world did the negro try to shoot you and you had him handcuffed and he said well we finished him off and that is all. I didn't have nothing

to do with it and don't want to have anything to do with it.

He said that they beat him between Hall's house and town and they finished him off at the well. I asked him how come all that string of blood there through the sidewalk and he said that's where they drug him through the Courthouse and out through the men's toilet and out to the back.

I am sorry I can't talk loud enough for you fellows to hear me but I am nervous and I am kind-of weak and can't talk very loud. I said I asked him how come all that blood across there through the sidewalk. I said was he bleeding all that bad and he said they drug him all through the Courthouse and through the toilet and to the jail house. And so we left and I said, "Well, looks like you all done a pretty nice job." I do not know that he made any reply to that. This conversation took place in front of Johnny West's liquor store.

Newton, Georgia is in Baker County and Baker County is in the State of Georgia. I am familiar with the Phoebe Putney Memorial Hospital here in Albany, know where it is. It is in Dougherty County in the State of Georgia.

Cross Examination.

I do not remember the last time that Sheriff Screws arrested me and incarcerated me in jail but he has arrested me, I know. I do not remember when the last time was. I do not keep up with things like that. I do not keep up with the various arrests.

I haven't told anybody much what I have told here today. I hadn't told anybody about it until I came here today except I told the FBI men about it when they came to see me. They came to see me some few weeks after it happened. Those are the only people that I mentioned it

to. I haven't mentioned it to anybody besides them. I haven't mentioned it to anybody except them that I know of.

I got the impression from the blood that they did a pretty good job. From the way it looked, I think they did a good job.

131 MR. W. H. CRAWFORD, 35th witness sworn in
behalf of Government, testified on

Direct Examination.

My name is W. H. Crawford. I am employed by the Federal Bureau of Investigation. I have been with them since March 4, 1940.

I was associated with Special Agent Marcus B. Calhoun in investigating this case. The second interview with Sheriff Screws was occasioned by the fact that we wanted to get the criminal docket of the Justice of the Peace. So, we went by the Sheriff's office and he turned over to us the criminal docket. We turned through the criminal docket with Sheriff Screws and asked him did he make any of the entries in the criminal docket.

I have here photographs of several pages in the docket, not the whole docket. The pages I have here show the entry of the Bobby Hall warrant. I asked the sheriff about who made the entries on this page. We asked him did he know who made them and he said no. We asked him did he make them and he said no. We got the warrant from the Sheriff on February 20th, the first day we were down there. On this second interview when we were asking him about the docket sheets, we asked him did he know who wrote the warrant and he said no, and we also asked him did he write it and he said no. He said he did not know.

We did not take specimens of handwriting from the sheriff on that occasion. We later interviewed the sheriff again and obtained from him handwriting specimens. I have here the original specimens that we took from the sheriff. There are six pages of specimens.

We took the warrant that the sheriff turned over to us, the original warrant and the photograph of these docket sheets and the specimens of handwriting that we took from Sheriff Screws and we transmitted those by United States mail to our Bureau in Washington, to the technical laboratory at Washington, D. C. and asked that examinations be conducted to determine if the handwriting of the questioned documents was the same as the handwriting on the known. We transmitted them to Washington and asked that an examination be made of them. We marked these exhibits before we sent them up and the marks are on them now. Later they came back into our possession from our Bureau in Washington with the same markings that we put on them.

The purpose of sending the documents, the warrant and the docket sheets and the original specimens of Sheriff Screws' handwriting to the laboratory was to determine if Sheriff Screws wrote the warrant and also to determine if he made the entries on the docket.

Q. Mr. Crawford, when photographs were taken of the docket sheets in the Justice of Peace's docket from where did you get that docket?

A. We got the docket from the Sheriff's office.

Q. Now, where did you leave the docket?

A. We left the docket after we got through with it with Judge Riley. In fact, we got Judge Riley's permission, Judge T. A. Riley the Justice of Peace, to obtain the docket from the Sheriff's office because he, as I understand it, is the legal custodian.

Q. And you delivered it to Judge Riley?

A. Yes, sir.

Cross Examination.

By Clint Hager:

Q. Judge Riley is Justice of Peace?

A. Yes.

Q. And you delivered it back to him?

A. Yes, sir.

Q. And left it in his possession when you left there?

A. Yes, sir.

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MR. HUBERT L. DAVIS, 36th witness sworn
in behalf of Government, testified on

Direct Examination.

I am Hubert L. Davis. I live at 320 S. Veitch Street, Arlington, Virginia. I am a Special Agent of the Federal Bureau of Investigation assigned to the examination of questioned documents. My headquarters are the FBI Laboratory, Washington, D. C. I have been employed by the Bureau over two and a half years. During this period of service with the FBI I have been assigned specifically to the examination of questioned documents, including handwriting, hand-printing, type-writing, printing, forgeries and altered documents. In that period of time I have examined thousands of specimens, including the types of examinations that I enumerated. That is my regular assignment in the Federal Bureau of Investigation, to examine documents, handwriting, etc.

I am a college graduate. I received my B. S. Degree from Western Kentucky State College at Bowling Green, and after graduation I worked for six and a half years as Assistant Cashier and bookkeeper of a national bank; and on receiving my appointment with the Bureau and assigned to the Document Section, I attended classes, lectures

and discussions pertinent to that type of work and worked with other examiners until I reached a degree of proficiency whereby I was granted permission to act on my own judgment.

In my work in the Bureau I make these examinations and act on my own responsibility. This document which purports to be a state warrant, handed me by the district attorney, came to me for examination. This was submitted to me in the laboratory for handwriting examination. These specimens of handwriting also came to me for examination. I marked all of them. I was requested to compare the handwriting appearing on the questioned warrant with the known handwriting to see if they were written, if I could reach a conclusion as to whether they were written by the same person.

I made some charts in my examination by using a photographic negative made the original size, the as-is size of the documents, the questioned warrant and the known handwriting, and that original negative was placed in an enlarger and enlarged on these charts approximately five times. I have some charts here that I made up in this comparison. These are my charts here and I shall now unfold just those charts on the warrant.

(Large handwriting charts exhibited to jury.)

The two charts hanging to the left, to the left of the jury, are known, are the known handwriting of the individual that I was asked to compare with the questioned warrant. Now, these two—I have three, one small chart—this is the upper portion of the warrant, being a large sheet of paper. It is not possible to make a chart or the chart would be unwieldy to have it all in one section. So, this is the top portion of the warrant and this is the bottom portion, and this is the five times enlargement of the

outside, of the handwriting appearing on the outside of the warrant.

I have in my mind, and am exhibiting to the jury the original warrant which was photographed. This portion, the first photograph is the photograph five times enlargement of the top portion above the double line on the warrant; and the next photograph is the photograph of the bottom portion of the warrant and the small one is photograph of the handwriting appearing on the back of the warrant, on the outside of the warrant.

In my comparison, I took into consideration those formations of letters or peculiar way of making letters which I think is characteristic of the individual's writing. This is the known specimens of the sheriff's handwriting that was sent to me from the Atlanta office for comparison with the handwriting on the warrant.

By way of explanation the red marks, the red arrows you see are extraneous markings which I have placed on there for my convenience in explanation. They are not a part of the original negative or the photograph. They were placed on there by me with a red pencil.

As I said, I took into consideration those peculiar formations or characteristics which I think are characteristic of the individual submitting the known specimens.

Taking the first word "Baker" at the top of the line "Baker County" you will note that in making the "B" the top loop or portion of the B is elongated and not a rounded stroke as usually made. You will find that characteristic on the known handwriting in the letter B, and here it is very comparable to the top portion of the B on the questioned warrant.

You will find that the individual in the middle of the word, instead of making the usual small "k" the way a small "k" is usually formed; he makes a capital "K", what is usually referred to as capital form of the letter "K". That same characteristic is found throughout the known handwriting. He makes a large capital size letter "K".

The next character, I think, is very characteristic of the individual, the ending letter "r". You will note that on the questioned document instead of making a well formed small letter "r", he more or less creates a hump in the line and finishes the stroke of the "r" with an outward sweep. That characteristic is found very pronounced and very comparable in the last word "Baker" and also in the second from the bottom of the known specimen.

Turning to the name "Bobby Hall" we find the same type of "B" and in the word "Hall" in the formation of the capital "H" we have what is referred to as a tick or the beginning upstroke of the "H"; and in lifting his pen and in proceeding to form the second step of the letter "H", it is noticed that the pen has not been lifted directly and there is a small tick appearing on the bottom of the capital letter "H". And also in forming the cross between the two steps of the letter "H" we find that he begins directly on the first staff and proceeds some distance past the second staff of the letter "H". Turning to the known handwriting we find in five letter H's those same characteristics which I have pointed out, with the exception of the beginning stroke on the first two. On the last three we have the characteristic beginning stroke and also the pen drag on the first staff of the letter "H" and also the extending of the cross-line beyond the second staff of the "H" in all instances.

The next characteristic which I point out is in the word "Steeling", the capital letter "S" formation and the distance between the upstroke and the down-stroke, and the angle create at the base of the small letter "t". You will note that there is quite a space appearing at the base of the "t" and the cross-line, the crossing of the lines in the place of the capital letter "S" in the word "Steeling" are somewhat close together and you might say jammed up to that point. Turning to the known handwriting we find

the small portion or small angle created at the crossing of the capital letter "S" as appearing here and the distance, formed by a long up-sweep forming the first staff of the small letter "t" and the downward stroke. Here it is very evident that he doesn't retrace, doesn't retrace on his downward stroke of the letter "t". That wide angle is very evident in the second word "Steeling", also the third and also the last.

Spelling of words if characteristic.

Stipulation.

Mr. Hager:

Mr. Crawford (FBI Agent) tells me that he did not exhibit the writing to the sheriff but asked him to write "stealing" and we will stipulate that. He further says that he had the warrant in his possession at that time or prior to the time.

(Direct Examination Continued.)

On the questioned warrant you will notice that the word "stealing" is spelled "steeling". On the known handwriting in the six instances that he has written the word "stealing", the word is spelled "s-t-e-e-l-i-n-g", as it is on the questioned warrant. In handwriting comparisons spelling of words as well as the formation of the letters is a significant characteristic.

Proceeding with the explanation of other characteristics, the peculiar formation of the letter "g", small letter "g" ending of the word "stealing", the individual makes a small loop and not a well formed loop at the top of the "g", and in some instances breaks the line of writing before forming the small letter "g". On the known handwriting we find the characteristics, small formations of

the small loop at the top of the small letter "g", and a sweep to the right and downward forming the tail of the "g"; and, as pointed out, there is a tendency of a break between the "n" and the "g". That break is noticed in three—four instances—three instances and a tendency in the first writing "steeling" in the first line of the writing "Steeling truck tire".

In the words "truck tire" the usual formation of the letter "t", the upstroke. The small letter "t" is made with an upright stroke and a retrace downward stroke. On the questioned warrant it is found that the individual does not make an up-stroke forming the small letter "t" but begins his line of writing at the top of the small letter and proceeds down and into an arc. That is exhibited in the beginning "t" of the word "truck" and beginning "t" of the word "tire". Also, I might point out that in this instance we have a pronounced or sharp angle at the bottom of the small letter "t" in the word "tire". Then turning to the known handwriting we find that the "t" is formed in the same manner beginning at the top and coming down with no tendency to make an upstroke beginning the small letter "t" and we have an indication of a sharp angle at the bottom of the small letter "t".

In the word "truck" there is a tendency of the writer of the questioned warrant to leave a break by lifting his pen after the small letter "u" and proceeding to the small letter "c". We find a break in the line of writing. On the known handwriting that is notice in five instances out of the six known writings of "truck", the break between the "u" and the small letter "c".

And again we have the characteristic formation of the large for the small letter "k", using capital formation of the letter "K". That is also noticed on the known handwriting.

The next characteristic which I pointed out is the word "of", small two-lettered word "of". You will notice that

the formation of the small letter "f" with the loops or indications of loops are not very pronounced and are retraces. The top portion is a retrace and a very small portion of elongated loop or formation of loop at the top of the letter "f". Turning to the known handwriting, the first letter, the first word "of", the letter "f" is formed in the same manner as in this instance: The top loop is a retrace and also the bottom is a retrace in the same manner as pointed out on the questioned warrant.

The large letter "F" in the word "Firestone" is characteristic and it is formed in unusual manner at the top in straight downward stroke, no indication of finishing the stroke. It is formed with straight diagonal stroke and the cross formed by the beginning of the upward forming the "i". That same formation of the letter "F", capital letter "F" is found in the word "Firestone" here. We have a straight downward stroke diagonally with the formation of the cross, being the beginning of the upward stroke going to the small letter "i".

In the word "make", I have pointed out two characteristics. The first is the break between the first letter "m" and the small letter "a", with the abrupt ending of the letter "m", the downward stroke to the line of writing approximately at the line of writing. And there is the "K" that I referred to previously, the formation of the capital style of "K". That same type of "m" with the abrupt ending and the break between the "m" and the "a" is found in four instances, with the exception here of the slight tick going to the "a", and the break occurs between the "m" and the "a" in all instances; and we have the characteristic formation of the capital letter "K".

The lower portion of the warrant, I think I can point these out rather hurriedly. The same wording as appears in the word "Baker", the same formation of the top portion of the letter "B" and the capital "K" formation and the slur formation, that is not a clear or good formation

of the small letter "r" as we notice on the known handwriting. That same "B" in the word "Bobby". And in the formation of the letter "H", as I pointed out previously on the other charts is the beginning tick to the first staff and the pen drag at the lower portion and the extension of the cross between the staffs, as we find it, as pointed out on the known handwriting. There is the tick, the pen drag and the extension as it appears here.

As I pointed out on the known, the angle, the width of the angle at the bottom, the base, of the small letter "t". The word is spelled in the same manner as appears on the known handwriting, "s-t-e-e-l-i-n-g". We have the formation of the "t", the base, we have the angle and the indication of a lift, indication of decrease in pressure between the "u" and the "c", the formation of the capital letter "K" there, the same "t". In the word "of" there is almost a retrace of the two loops of the "f" and the same capital "F" in the word "Firestone", the diagonal downstroke and the cross of the "F", formed with the upstroke of the small letter "i", as pointed out in the known handwriting.

This small chart refers to the name on the outside of the warrant. We have the formation at the top of the capital letter "B", very similar to the formation of the top of the capital letter "B" on the known writing, the similarity noted between the two B's in the formation of the double "b" is noticed between the known handwriting and the questioned writing on the warrant. Here again, we have the same formation of the capital letter "H", the tick or pen drag at the bottom of the first staff, before formation of the second staff and the extension of the cross-line between the staffs. And another characteristic that I have marked is the distance or the length of the stroke between the small letter "a" and the formation of the first "l". It is very apparent in the fourth line of writing of Bobby Hall at the bottom of the known hand-

writing and that is noted in the formation between the "a" and the "l" of the writing appearing on the questioned warrant.

From this examination I reached the conclusion that the individual who prepared the known handwriting submitted to me for comparison with the questioned warrant was the same individual who wrote the portions of the warrant as I have pointed out, Baker, Bobb Hall, Steeling truck tire of Firestone make, and the top portion of the warrant. The words "Baker", "Bobb Hall" "Steeling truck tire of Firestone make" on the bottom portion of the warrant and the word or name "Bobb Hall" appearing on the outside of the warrant.

I did not reach a definite opinion as to the names George Durham and T. A. Riley as they were not sufficiently comparable to the known handwriting. They were not sufficiently comparable for me to reach any conclusion.

Cross Examination.

My name is Hubert L. Davis. I said I lived in Arlington, Virginia, which is kind of a suburb of Washington, D. C. My work is all in Washington. I am 33 years old. As to becoming a handwriting expert in 33 years, they are referred to some times as experts. I call myself an expert. I consider myself as having knowledge above the average layman. My principal experience before I went to the Bureau of Investigation was as a bank clerk, six and a half years in a national bank. Then I said they gave me quite a few lectures up at the FBI. I attended lectures for over a year, approximately a year and a half.

I have been out on my own where they were willing to trust me with my judgment for approximately a year, almost a year.

The FBI is one of the investigative bureaus of the government. It is the business of the FBI to swear out war-

rants in certain cases falling under their jurisdiction, white slave cases, motor vehicle theft, etc. I am familiar with warrants and the swearing out of warrants. I know you have to make an affidavit to begin the warrant and I know the warrant does not become a warrant until it is signed by the United States Commissioner. It is my understanding, though I am not familiar, that a state warrant does not become a warrant until it is signed by the Justice of the Peace.

I do not see any similarity between the "T" that is on here, that is the signature that made the warrant—I do not find any similarity in the ending of this "T" which comes down in perfectly straight mark, no curlicule, with those "T's" there. I do not see any similarity in the portion you have referred to. I do not see any similarity in the five I have here. Every one of the "T's" is at a distinct slant to the left and not the distinct curlicule at the bottom. And the "T" here on the signature of "T. A. Riley" comes down perfectly straight. And the first two T's in here the top covering the "T" comes out perfectly straight and perfectly level, and the third one also comes out perfectly straight; and on the "T" down here there is a downward stroke and then comes up distinctly with the end of it ending rather light.

Those differences counsel points out, there are differences that are noted in my examination which led to no conclusion on my part as to whether they were written by this individual or not. I did not state that if I found similarities I reached a conclusion but if I did not find similarities or rather if I found dissimilarities that I did not reach any conclusion. If you find definite similarities that show formations of letters and characteristics, as I have referred to on my charts, and you find those characteristics existing in the number that I have pointed out, the questioned in comparison with the known writing,

you reach conclusion that they were written by the same person.

I notice no similarities that would point to identity in comparing the "T" in the signature of "T. A. Riley" with the "T" that is on there. So, the "T" is out. The only significant similarity I see between the "A's" in T. A. Riley is the angle at the base of the small letter "a". I pointed it out in the first one up here and the angle in the bottom one is right here, we have a formation. I would not say that the same person who made this "A" made that "A". I would not say that they were written by the same person. I stated that from my examination I did not reach a definite conclusion. I cannot reach a definite conclusion now. My conclusion is as it was. I won't say that the same person that wrote this "A" wrote that one. I won't express any opinion about it. I won't say that he did not do it.

The letter "R" is, as pointed out by counsel, made by first starting about half-way up the line with a down-stroke and leaving a distinct loop with lots of daylight to be seen through it, comes on up here and comes back to the original down stroke and makes quite a loop there showing daylight and then comes back down even with the starting stroke. The "R" on the right-hand part of the loop has a very sharp angle on each of those. I see those on the known handwriting. I wouldn't say they were more distinct than the angle on the "A" that I called attention to. The angle on this "R" is not as pronounced. There is no definite formation of an angle at the top of the "R". The first one here has quite a bit of daylight right there. There is not as much daylight between the down loop and the upper loop right in there. Here is a slight indication. Right here is some daylight. I think that is some but it is not as pronounced as it is over here, as counsel pointed out.

I call the starting of each one of these R's, the little tip there I call a tick or beginning stroke. The beginning stroke or the tick starts there at the left and comes up before starting the down-stroke on each one of those. There is no indication of the same parallel stroke there.

I did not measure the length of the dash over the "i" on the enlarged copy. I noted that. I wouldn't say this was exactly round. It is more of a dot than these appearing here on the known. I do not see any similarity at all between that "i" and this "i". Every one of these "i's" have a slant to the right and this one is almost perpendicular, and on these i's there is a distinct v and an angle under each one of the i's on the up and down stroke. There is not a definite formation of an angle over there, not the definite formation of angle over there that there is here. I do not see any similar characteristic between those two "i's" or anything to base a conclusion on. I based my conclusions on the characteristics that were written down here. The formation of 26 letters into words is what I based my conclusion on.

One of the characteristics that I referred to was the spacing of the letters, one letter to another. There is quite a space between the "l" and the "e" in Riley. This line here is a little longer than usually formed. I said that this line here separating the "l" and the "e" is a little bit longer than usual. On this one it is very close and it is not as pronounced.

A fellow's spelling is also considered a characteristic. T. A. Riley here is not spelled the same as Riley on the warrant.

As I stated before, in my examination I reached no conclusion as to whether the same man wrote the T. A. Rileys. Even with all those dissimilarities I reached no conclusion. I cannot reach one now after having them pointed out to me. I cannot reach a definite conclusion now for the reason that in the writing of the word or the name "T.

A. Riley", as you can note, there are certain irregularities in the formation of the letters. In the word "Riley" we have an unevenness noted, in the formation of the line quality is what I am referring to; and the unevenness of the "l", the top here. It is noted that the line quality is uneven; irregular and at the bottom of the "R" or the formation of the top of the "y" it is possible that the writer could have stopped or halted for some reason or other, and those halts or irregularities in line quality, noted in this capital letter "R", are characteristics of forgery; and I took that into consideration in my examination; and, therefore, I did not reach any conclusion.

For the same reasons I did not reach a definite conclusion as to whether the person that wrote George Durham wrote either the word T. A. Riley or any of this questioned document. It is noted that the capital letter "G" and the small letter "e" in the formation of the letters there seemed to be a pause or not written regularly. There could have been a pause where the ink ran out on the paper where he could have been copying another signature as in the case of forgery. I do not say there is any forgery here. I do not say that the ink ran out. I do not say there was any pause. I say that from the indication of the writing on the paper there are indications of things that point to me the possibility of forgeries. Therefore, I could not reach a definite conclusion. All I say is there is a possibility. By possibilities I meant those instances appearing on the paper that indicate unevenness of line, irregular line quality and pauses or stops or indications. That is what I meant by that.

The amount of schooling that a fellow has had has something to do with his handwriting. Every individual writes differently from others. If they write with spencerian pen or stub pen it makes a difference in the formation of letters but still each person has his own char-

acteristic way of forming letters and it can be noted whether he writes with stubb pen.

The letter "B" was the first one I pointed out similarities in. I took up the word "Hall" in the known handwriting and the disputed handwriting about second or third. Hall over there is at the bottom of the chart. On the disputed handwriting there is a tick at the top of the letter "H", starting below the height of the letter it takes an upward turn and comes down at a left degree angle and then an upward tick here at the end of it. I think I pointed out on the first specimen of handwriting where there is a tick either at the top or the bottom. The tick does not appear in the first two. I think I said in three instances that it did appear. In my testimony I picked out those letters where I found a similarity but I did not point out directly any dissimilarities. I don't remember whether I pointed them out directly or indirectly.

As counsel points out in the word "Steeling", the first letter "S" starts about the middle of the line and goes down at a left-hand angle and then comes back sharply to the right forming two square angles before it starts on the upturn. I see the two angles counsel refers to, that angle there and this angle right here. These "S's" do not have this beginning stroke, as counsel referred to right here. You have got to have another line and make another line. I said the line is not there, the angle is not there. This angle right here is not there but this angle down here is very definitely formed right here, comparable, I think, to the one on the questioned warrant. The formation of the capital letter "S", in my opinion, is very similar. There is a sharp retrace in the top of this "S" and the "S's" here all have a big loop in them with no sharp angle at the top. There is no angle on any of them comparable to this "S". That is not a dissimilarity. It is not a similarity that points to non-identity. As I originally pointed out in the writing on the specimen and the warrant, the writing

in between the lines is smaller than the lines appearing on the known handwriting, I think. The writing would be smaller and would tend to bring in variations in sizes of the letters; if the writing was restricted in any way or within certain points, the formation of the letters would be affected.

I would not say that the top of that "S" is similar to the top of any one of the known handwriting "S's", the top of it, which is a dissimilarity in formation but it does not point to non-identity. It is not made in the same way. And the starting point with the angle at the bottom that is a dissimilarity in form.

The fact that the lines are not the same can be explained by the fact that this writing and this writing and this writing are three separate sheets of paper and they are placed on the photographic negative or the picture is made so as to include all three sheets on one negative. After measuring those two I would say that those lines are approximately the same as these over here, so there is not any difference in the line. The difference in the formation of the letter "S", I can't say, is because of the lining on the paper particularly.

In the letter "g" in "Steeling", after he finishes the loop of the "g" at the top similar to a small "a", he slants back to the left and doesn't again cross the line, comes down here and comes back up here at an angle. It does that, as counsel says, in that formation. There is no formation over here where there is a "v" left as pronounced as it is over here in this "G". That is dissimilarity in form or a variation in handwriting, a natural variation.

My opinion is based on those formations which tend to point to identity; the characteristics in the top portion of the letter "g" and the break, as I referred to, are characteristics which are more significant, in my opinion, than the upstroke of the tail of the "g". There is a formation of a loop there in the "g". There is some daylight

through it. I see a trace of a light. In my opinion the formation of the top of the "y" is very similar in all instances. In fact, the formation of the loop of the "y", as I pointed out, the distance of the stroke forming the other part of the formation of the staff of the "y" are very similar, the distance.

To some extent one of the things I base my opinion on is the apparent weight that is put on the pen, that is whether it is bold writing or thin writing. In the words "Steeling truck tire of Firestone make" I see a difference in the writing, the width of the writing but that can be not only attributed to the weight or the pressure of the pen but could be attributed to the pen used in making the writing. This could have been a fine point pen. From my examination, I would say that the point of this pen is a finer point pen than the known handwriting. If you take a fine pen point, a fine point pen and make enough pressure on it, it will make heavier writing but you will have definite traces of pen nibs or where pen nibs run into the paper. I do not see any indication of where real heavy pressure has been placed here, that is along the line of writing. Regardless of what may have caused it, I do see a difference in the boldness of this handwriting and this known handwriting. There is a difference in the width of the line of writing. It could be due to the writing instrument used.

There is a definite drag or break, I mean, between the "u" and the "c" in "truck". I think there is a definite break. In this one there is no break at all. The difference between this and the five known specimens is a natural variation. In all but one instance the break does appear in the known handwriting. I believe I referred to that in my direct testimony. There is no break in this one of the known specimens. In this one there is a pronounced break. In this one the break is just as pro-

nounced, if not more than over here. I wouldn't say but there is a definite break there in both instances.

Turning over here to "Firestone" and comparing the "F's", there is a variation in the third one here but not a definite difference. I would call that a variation, a natural variation. It is not made in the same formation; the loop is not there. There is no loop over there on that one but in three instances out of the five there is no loop, as you pointed out on the questioned warrant.

On this questioned document over here where the "F" is crossed at the top and at the right-hand side there is a distinct tick on there. I see the tick. That is a pen drag or tick and that could be a characteristic. On the five known specimens there it does not appear but again I can say that that could be a natural variation. It could have been written by an entirely different person or it could have been that the pen at this point could have stuck into the paper. That is a possibility that I could not explain whether it stuck there. I just don't know. I can't explain every mark or tick as it appears here as to whether it is a definite trace or a tendency but the formation of the letters, the uniform formation of the letters, is very similar. Some formations of the letter "F" look alike and some do not. Every person has his characteristic way of forming the letters.

In the word "make" it starts out to the left in the letter "m" with an upstroke which is lighter, which could mean that whoever made that or wrote that upstroke, that it was characteristic of them that they made a line coming up. They did in that instance there, doesn't seem to be as much pressure. The line is heavier on the downstroke. The upstroke there is lighter and the last one is very much lighter. It is lighter than the down-stroke. The upstroke on the known writing is not as pronounced. I would say this line right here is of lighter pressure than

this line or this line. There is an indication to me there that it is slightly lighter.

The fourth word "make" of the known writing does not have the formation of the questioned but again we have four other "m's" that do start in the same manner as the "m" on the questioned warrant.

In the word "Hall" there is an angle there at the top of the first down-stroke and the two, the first two of the known specimens have no angle whatsoever. There is a very distinct tick at the bottom of this letter "H" on the down stroke. I referred to that tick. On the first known specimen here there is a slight tendency of a definite trace of a tick. There is a tendency there to make a tick. There is a trace there. In all instances of this known there is a tendency to trace and in three or four instances I would say it is prominent.

In the word "Hall" on the disputed specimen there is a wide space here between the letter "a" and "ll". That is one of the things I pointed out. I would say on the known specimens that this spacing and that spacing and this spacing and the one I pointed out are definitely comparable to the distance in the word Hall on the questioned warrant.

This handwriting business after you look at it and study and enlarge it and you see some similarity and see some dissimilarity is a matter of opinion.

Re-Direct Examination.

These photographs of docket entries handed me are of pages 1, 75, 76 and 77. I received photographic negatives from which these were prepared.

Q. I mean did you receive that in the same manner and at the same time you received the other?

A. Yes.

- I made some charts on those four docket sheets as I did on the warrant, etc. I can leave the other charts up and use these by suspending them right on.

These are the same known specimens we had here awhile ago and I am using these known specimens now in comparison with these docket entries. I shall now explain, as I did awhile ago, to the jury what comparisons I made to determine whether the writer of these known specimens also wrote the docket entries, the four pages of docket entries.

In my comparison I compared the T. A. Riley signature on the upper half, upper portion of page 1 of the docket, with the known handwriting of the individual who submitted the specimens. That is docket sheet No. 1.

Q. All right now, I hand you the original document, state whether or not that is the T. A. Riley signature that you are fixing to talk about?

A. The signature appearing on the chart is a five times, approximately five times enlargement.

Q. I know but is that the same signature?

A. It is this signature appearing at the top.

The first characteristic that I want to point out is the loop or top portion formation of the capital letter "T" and the straight horizontal line at the top of the capital letter "T" and also the upstroke or curling up of the bottom portion of the staff of the "T".

The characteristics appearing on the known specimens, I pointed out: the loop, formation of the loop and the horizontal stroke to the right forming the "T" crossing and the curling or upward stroke at the base of the capital letter "T" is noted. And that is noted in every instance with the exception of three instances where there is a slight tendency in the known, which is a natural variation, of not exactly a horizontal line. I might point out that

in writing a person never makes a copiable, a copy that is that can be superimposed over another writing. There is a variation.

No one person ever writes exactly the same or identically the same at any time but there are characteristic formation of letters. Whether a person was educated or uneducated would have nothing to do with the characteristics, as the characteristics are evidence in a person of considerable education as they are in a person that is illiterate.

The next characteristic is the placing of the period or dots between the letters "T" and "A". The second one after the "A" is very pronounced downward stroke and isn't a pen jab or a dot directly on the paper. The stroke is made by forming a short line there. That is not so pronounced in the first one. The tendency is there. It is elongated. That same tendency is there evident and may be seen in numerous instances, after the "T" and, in fact, after all of the "T's" and there is not a definite dot there but there is more or less of an elongated stroke made there with the pen to form the period or the dot after the capital letters.

In the word "Riley", the capital letter "R", the beginning stroke of the letter "R", there is a tick. There is a period on the capital letter "H" made in the same manner, that is with reference to the presence of the tick on the downward staff forming the capital letter "R" and also the top of the letter "R" the formation is comparable to the elongated loop that I pointed out with reference to the capital letter "B" in the word "Bob". That formation or tick is noticed in every instance on the known handwriting of the capital letter "R" in the word "Riley" and also the top portions of the loop, and the formation of the loops are comparable as I pointed out about the top portion of the "R", not a rounded stroke but it has an

angle-like in every instance, as it appears on the questioned page 1 of the warrant.

The small letter "y" is characteristic and the top portion is similar, particularly the angle of the downward stroke forming the tail of the "y" below the line of writing. The angle is somewhat of a 45-degree angle downward.

I believe I was pointing out the angle in the formation of the tail of the "y" in the name "Riley". That same angle formation of the tail of the small letter "y", as found in the known handwriting, is approximately the same angle with reference to the margin of the paper. It will be noted, however, that the uptrace, upstroke, is made on the tail of the "y", whereas it does not appear on the known. I believe he does make a downward stroke with no uptrace in other instances which I will explain.

Referring to the signature on the lower half, this is a five-times enlargement of the lower half of page 1. We find the same characteristics existing in the name T. A. Riley, which I pointed out on the previous upper portion of the page and also in the known handwriting. We have the formation of the loop, the upstroke, the bottom portion of the capital letter "T", the same strokes forming the periods or dots between the capitals as they appear over here; formation of the letter "R", the same elongated loop at the top of the letter "R", and here we have the dot over the "i" in the word "Riley", a thin stroke to the right, approximately on this chart of half an inch or more.

Referring to the signature or the spelling of the name Riley on the known handwriting we have the same appearance of the stroke to the right. Instead of a period or dotting of the "i", in all instances that appears in the known handwriting as it appears here. It appears here and here it does not appear. He doesn't make any dot over that at all. It appears here and here it appears. The same angle downward of the tail of the "y" as was found on the known handwriting.

In the examination of the signature or the spelling of the name "M. C. Screws" appearing on page 1 of the lower half of the docket entry, we have the tick or beginning stroke on the capital letter "M". I have referred to that previously and also the abrupt ending in the capital letter "M". There is no tendency for the uptrace to finish the stroke of the "M". That characteristic is also noted in the known handwriting, capital letter "M", the beginning tick or upstroke and the abrupt ending.

In the formation of the capital "C" there is a simple or small loop at the top of the capital letter "C" and on the known handwriting we find the formation of the capital letter "C"—or pardon me, small letter "c" in all three of the signatures on this page of the known handwriting and the three signatures appearing on the second page of the known handwriting.

In the formation of the capital letter "S", in this particular instance we have no formation of the loop. It is more or an angle, a down-stroke and an upward stroke forming an angle at the base of the capital letter "S". That same characteristic is very evident in the known signature of this individual, in that there is no definite indication to form a loop or a circle and at the bottom of the capital letter "S" the downward stroke and upward stroke forming an angle.

The small "r" in the word, in the name Screws, is characteristic in that the top portion of the small letter "r" is rather elongated or a longer stroke to the right than is usually the manner in the making of the small letter "r". That is very evident in this signature and very pronounced in the signature at the bottom of the page, the length of the stroke to the right of the small letter "r". That is evident in all instances of the known.

That finishes with page 1 of the docket, all but this characteristic on the "w", small "w". The formation of the ending stroke of the small letter "w", instead of at

the top where he leaves the top of the small letter "w" and goes to the right to form the letter "s", is retrace of line, apparently has the appearance of an "i" and has a dot over it. That characteristic is noticed in the same manner in the known handwriting of this individual, has a dot over it that would pass for a dot over an "i". The usual manner is to finish over and then form the letter "s" instead of the retrace.

At the end of the signature it is noticed that the writer has made a dash with his pen about an inch long on the chart. That characteristic is also noted in the known handwriting very pronounced in this instance, this instance. He has omitted it in this instance but there is a definite stroke to the right appearing in this signature and the other two instances it appears very definitely.

Turning from page 1 of the docket we turn to page 75. In the interest of time the same general characteristics appear on an examination of the docket page 75 that I have enumerated. On page 75 we have the same characteristics and in the spelling of the name "T. A. Riley". Going to page 76, my examination and comparison of page 76 of the docket shows that it has the same general characteristics that I have described, the same general characteristics. Going now to page 77, the top portion of the page. The top portion of page 77 has the same general characteristics. This is the lower portion of page 77.

This lower portion of page 77, relates to Bobby Hall. I pointed out, I believe, in the signature "T. A. Riley", it could be noted that we have the formation of the loop, the upstroke of the "T", the "R" the same characteristics as is noted over here. This docket entry shows "Date of issue, 29th day of January, 1943." It also shows "Offense—charged—Stealing truck tire." The name of the prosecutor is shown as "George Durham."

In comparing the "offense charged—steeling truck tire" with the writing appearing on the known specimens, it will be noted that the spelling is similar, spelled in the same manner, "s-t-e-e-l-i-n-g" as was pointed out previously in all instances on the known. And we have the "g" formation, formation of the "g", not a closed circle at the top above the line of writing. That was pointed out previously on the known handwriting of the small letter "g".

And the name "Bobb Hall" the same type formation of the loop of the capital letter "B" and the "H". That has been described. We have the tick or beginning upstroke of the staff of the "B", the pen drag or retrace upstroke going to form the other staff in the letter "H"; and also the cross line; and here the distance between the small letter "a" and the first small letter "l" is pronounced, as has been pointed out previously in the known handwriting of the individual. "Steeling truck tire", in "truck" in this instance we have the break between the "u" and the "c", a break between the line of writing; the capital letter "K" and the "T" with no upstroke or beginning stroke to the small letter "T", in both instances at the top of the letter and not at the beginning of the bottom of the line of writing. That characteristic has been pointed out previously on the known handwriting, the break between the "u" and the "c" and the beginning of the "t" at the top instead of at the line of writing with the initial upstroke, the capital letter "K" at the end. That completes them.

From my examination and comparison of the known handwriting of Sheriff Screws there with the handwriting on pages 1, 75 and 76, that in my opinion—I reached the conclusion that the person who wrote the known handwriting as is exhibited in these charts on the left wrote the "T. A. Riley" signature on the upper portion, the upper half of page 1 of the docket; the T. A. Riley and M. C. Screws signature appearing on page 1 of the lower half

of the docket; the T. A. Riley name, page 75 on the lower half; the T. A. Riley name, page 76 and the writing on page 77; upper and lower half, T. A. Riley, Bobb Hall and "stealing truck tire".

On this last one I did not reach a conclusion about the George Durham signature. It was not compared because I had no signature. I had no known signature to compare it with.

There are no two pieces of writing by the same person that are absolutely identical. They could not be superimposed in all respects, placing one over the other. There is a natural variation in signatures that are written thousands of times. Every time you write your signature it will be different. There will be a slight difference. There will be a difference. There will be a variation in the line of writing. All individuals have distinct handwriting characteristics. The conclusion is not based on the "B" or the "S" or the "M" or the "R" or the "W" or the "T" or any portion of those letters taken individually. The combination or the accumulation of those characteristics as they appear on the known writing as compared with the characteristics appearing in the questioned writing are considered and compared together as a whole. That is how you reach your conclusion and that is how I reached my conclusion in this case.

Re-Cross Examination.

Q. In making your comparison if you find more elements of dissimilarity than you do of similarity what conclusion do you reach?

A. If there is evidence, if there is characteristic evidence of dissimilarity, the conclusion is non-identity.

I testified about portions of pages 1, 75, 76 and 77. On page 6 of the Justice of Peace's docket, involving the state versus John Jackson and the State v. Frank Carter, the "T.

A. Riley", the "M. C. Screws" on the top portion of page 6 and the "T. A. Riley" after the line "Warrant issued by" appear similar and could have been written by the individual who wrote on pages 1, 75, 76 and 77.

On page 18, in the case of The State v. Cleo Ferguson for hog stealing the writing there, in my opinion, is similar to the writing I testified about on pages 1, 75, 76 and 77.

On page 56 I cannot make the statement that the writing there, aside from the signature, is similar to the writing that I have identified or testified about on pages 1, 75, 76 and 77 because I have no comparable known writing to compare with these words. I can't make a statement as to that. As I said, the writing on pages 6 and 19 could have been written by the same individual as the other. On page 56 there are less indications, just as a curbstone opinion, that the same person did the writing. Counsel understands that this is merely a statement of opinion and it is not an examination.

On page 57, case against J. C. Carter for a misdemeanor, I can't make a statement about because I have no word "misdemeanor" in the known handwriting with which to compare it. The number of letters would not have anything to do with it and the same letters, wouldn't help. You have got to have the formation of the letters in the words of like spelling and manner to make a comparison. The characteristics of one letter as set out in the middle of a word may be different in a different word. They are not comparable to begin with.

The writing on page 82 appears as if it could have been written by the individual who wrote 75, 76 and 77. There are similar characteristics present in the signature there of M. C. Screws as the one I have testified about.

On page 83, cases of the State versus Sam Jones and John Wesley Davis, the characteristics appearing in the "T. A. Riley" on the top portion and "T. A. Riley" on the

bottom portion and the characteristics in the M. C. Screws signature could have been written by the person who wrote the known handwriting.

The characteristics in the "T. A. Riley" signatures in the two cases on page 84 are similar to the handwriting on pages 1, 75, 76 and 77 that I have described.

On page 85, the State v. Louise Jackson, the handwriting on that page, in my opinion, is not the same as the handwriting on pages 1, 75, 76 and 77. There are different characteristics in the "T. A. Riley" signature. There are different characteristics present.

161 MR. OTHA M. SANDERS, 37th witness sworn
in behalf of Government, testified on

Direct Examination.

My name is Otha M. Sanders. I live at 307 Carroll Street, Albany, Georgia. My business is that of a photographer. I have been a photographer since March 8, 1930.

I made some photographs down at Newton this morning. Mr. Crawford, FBI Agent, was with me when I made them and the other gentleman over there, Mr. Calhoun, FBI Agent.

This photograph, designated No. 1, I made this morning is a general view shot from the post office side of Mrs. Jernigan's house, front porch, from the side of the porch closest to the post office. You can tell by that arch right there I was standing right on the edge of the porch.

This photograph now exhibited me is a photograph made from the front window on the jail-house side of Mr. Ellis' house at Newton, the front window next to the jail. I did not take it from the inside of the room but from just outside of the window. That window was shown me. We

just agreed to shoot it from there, Mr. Calhoun, Mr. Ellis and one of his girls was present, I do not remember which one. I wouldn't know either one of them by their name if they were called. This is not looking towards the jail but it is looking towards the back of the Courthouse there. You see, the jail is sitting right over here (indicating on photograph).

Here is another photograph shot from the porch of Mrs. Jernigan's house, from the other side of the porch. You see I shot one from one side and one from the other and this is the one from the side down towards the warehouses on the other side, on the opposite side. It is the side farthest from the post office. That is from the Jernigan home, from the front porch of the Jernigan home.

Here is another photograph made from the center of the porch or the doorway of the house of Mrs. Jernigan at Newton, made from the center where you walk out on the steps or the doorway, you might say. This is looking towards the well, the artesian well at Newton.

Here is another photograph shot from the steps of Mr. Ledbetter's or I believe it is a hotel, standing on the front steps shooting towards the well. That was taken this morning. This car was placed at the well this morning. The man standing by it out there is not Mr. Crawford but the other gentleman, Mr. Calhoun; and this lady is unidentified. She was just walking by. And this is from the Ledbetter front porch or the steps.

Here is another photograph made from the rear window from the back window of the Ellis home. There were two windows we shot and that was made in the presence of Miss Ellis and Mr. Ellis, looking toward the jail, sir; and this takes up along here where that other one leaves off. This building over to the left is the jail, to the left of that photograph.

Here is another photograph made in front of a window on the porch of Mr. Ledbetter's home at Newton. They

have a lot of vines up there and there are holes in the vines and I put the camera right up there and shot one. There are leaves on that vine that screens the porch in. I mean I shot this view from behind the vines. That is looking in the direction of the well.

This is another photograph made from the porch in almost the same position as the first without the car being placed. The man at the well is unidentified. That one is taken from the front steps of the Ledbetter home and there were no vines over where I was standing at that time. This was made from the steps. I was standing on the steps when I made that one.

This photograph is a shot from the same place as the others through the vines without the car being placed or before the car was placed there. It was shot behind the vines and on the porch in front of the windows.

These pictures were made this morning, I will say, at 7:30. I did not get the exact time. When I was standing on Mr. Ledbetter's house I was facing the sun directly and the sun was just high enough to give me trouble with the camera. That's the reason they are so dim.

This picture was made from the porch, the Ledbetter porch and the reason it is so foggy is because the sun was shining directly in the camera. That's the reason that picture is not as clear as the others.

There is a city light near the Ledbetter home on a pole. You can see a light there. It is not right outside of the house. It is out in front. It shows distinctly on the photograph across the street on the Courthouse lawn. It is across the street from the Ledbetter's to this light and I would say it was 60 or 75 feet. I measured the distance from the ground up to the light on that pole with my camera. It was about 18 feet with that particular light. The other one through the range finder—we have an automatic range finder—the other one says about 3 feet higher or 21 feet on the one in front of the post office. The light

I am talking about is another light. I measured two of them. The one in front of the hotel or where the Ledbetter's lived was about 18 feet high and the light over there next to the post office was 21 feet high from the ground up on a pole. The one in front of the post office is hung on a wire. It is hung on a wire from two poles and swung in the middle.

I developed these pictures and they are correct impressions of what I took down there this morning:

Cross Examination:

I said that this photograph identified as No. 6 was taken was behind the vines of the Ledbetter hotel porch. I was behind the vines. I was behind the vines as if I was standing there looking out with my eye. How far do you ordinarily stand behind vines to look out? I was right at the vines. I did not have the lens of my camera projecting through any particular hole in the vines, only right in front of the window. I did not have the camera through the vines. If it had been through, these leaves on here would not have shown. That shows the camera didn't go through. There were several places I could just walk up and see through. It was not any particular one.

If I had stood back near the wall, I would have gotten a photograph but not that distinct.

I was standing within a foot of the same place when I made photograph identified as photograph No. 5. I tried to get the same place. I tried to get at the same identical place. The difference in the photographs is there is a car parked in that one and there is not one in this one. That is the only difference in these two photographs, a car parked in one and there is no car parked in the other.

I was present and my camera was used one day last week when Mr. Lester Rogers took some pictures down there at Newton. I remember those pictures. I saw the

angles from where they were taken. I would know those photographs now if I were to see them.

This is a true portrayal of the Ellis home from the angle it is shot. This is a picture that was made—Now, the instructions, I believe, was to make a picture on the door-steps on the ground and every 20 feet to the jail house door, and this is one just before the last picture was shot, the best I can remember. This one shows near the jail. This one is near the jail. This photograph is a true portrayal of the Ellis home at the distance of some 20 feet from the jail-house steps. (Identified Defendant's Exhibit No. 1.)

This picture handed me is the third picture, I believe, that was shot, from about 20 feet from the Court-house steps proceeding toward the jail; and Mr. Rogers was standing on the walkway from the jail-house door. They have a paved walkway there, I believe, that is going out of the rear of the Court-house toward the jail. That is before you reach the coping out on the Court-house yard. There is part of the coping here that shows in the picture.

This is a true portrayal of the porch of the Ledbetter Hotel as it was and is this morning.

This is a picture made from in front of somebody's service station there or close to the Suwanee Store and cutting across at an angle to the Court-house square. Here is the coping and there is the jail. Here is the corner of the Ellis home right there and here is the Court-house over here. That would be toward Milford but not the Milford road. It is west of the jail house and the Ellis home.

This photograph was made right in front of the Ellis home shooting by the Courthouse across the Courthouse lawn at the jew store. Now, I am not good on directions but it is directly in front of the Ellis home. Looking out toward the Suwanee Store the artesian well is around the corner here. It is around the corner of this building from

where this picture was made. It is around the corner there but in front of the Courthouse outside of the coping.

I would say it is about 50 feet from the Courthouse steps to the well.

This picture is a shot made close to the well shooting across as far as Joe White's filling station. With reference to that picture the Ellis home would be directly in this position here, back behind the Court house. (Defendant's Exhibit No. 6.)

This picture portrays the same shot showing three houses in accordance with the position of the well. Now, this is the Jernigan home and there is the post office and I don't know whose place that is there but here is the well. I do not know whose home this is right next to the post office.

This picture was taken from almost in front of the Ellis home but a little back towards the sign post to show part of the Ellis home and the position of the jail. (Defendant's Exhibit No. 8.)

This is a picture of the Courthouse showing the position of the well. It was shot from a load of peanuts parked up at Joe White's service station. And this is the center of the two highways, one highway 37 going east and west and highway No. 91 going north and south. I was not doing the shooting. I was observing Mr. Rogers while he was doing the shooting of the pictures.

This picture was made another step nearer to the jail than picture No. 1 was. I mean this picture was taken 20 steps nearer the jail than picture No. 1. This is picture No. 10 (Defendant's Exhibit No. 10).

This picture portrays the Ellis home. If I had them in a series I could tell as they come along. This is the first picture that was made on the Courthouse steps. You can tell by the elevation of the grade, being up. You see the difference. That is made from the Courthouse steps. That is the back Courthouse steps going toward the jail, the first

picture we made—No, that is the first picture Mr. Rogers made. This picture was made immediately after you step off of the last step. Picture No. 12 was made immediately after you step off the last step of the Courthouse going toward the jail. It was made on that little old paved walkway. There is one of those others that comes in before this one. That was right after we got out of the coping looking toward the Ellis home. I believe this is the picture we made just before the first one. That is the one Mr. Short handed me a few minutes ago. Some of them have gone ahead. This one was not made inside of the coping. That was outside of the coping between the coping and the jail, somewhere between them. This picture No. 14 was made outside of the coping too on the way to the jail.

Re-Direct Examination.

On the photographs that Mr. Short just exhibited to me the angles or the spots from which the photographs were to be taken were selected by Mr. Rogers along with Mr. Screws. Both of them were there and they made the pictures and I followed along behind them. Mr. Rogers made the pictures from the angles he wanted them. I do not know that he made them from the angles Mr. Screws wanted them made.

Mr. Rogers referred to is Mr. Lester Rogers. He runs a peanut warehouse at Newton. He has been with a newspaper and he is a good photographer. He is a photographer. He doesn't follow it for a profession.

These views were shot from angles selected by Rogers or Screws. They chose their own angle. These pictures Mr. Short exhibited to me were made one day last week.

This picture showing the vines there in front of the hotel or the Ledbetter home was shot from the other side of the well looking towards the Ledbetter home, showing a view of the home, shooting towards the Ledbetter home. They

did not shoot a picture from behind the vines toward the well. They did not shoot one from the steps of the hotel or the Ledbetter home looking toward the well.

There was no effort made to take a picture from the Ellis home looking toward the jail or from the window of the Ellis home looking toward the jail, the window next to the jail. There was no effort made to take a picture looking from the Jernigan home looking toward the well.

Re-Cross Examination.

As to who chose the spots from which I was to take these photographs for the government, I chose some of them to show what they asked to be shown. The gentlemen from the FBI they said they wanted to see the well, see if they could see the well. So, I got so we could see what they wanted, where we could see or not see the well at those spots.

Q. And at each spot that they said they wanted to see the well, you could see it?

A. No, sir, you could see it but it will not show in the photograph, sir.

Re-Direct Examination.

I resorted to straight photography in taking the pictures of the well from Ledbetter's hotel and from the steps. There was no trickery about that. You can't trick with that camera, sir.

169 MR. A. B. LEDBETTER, 15th Government witness sworn; recalled, testified further on

Re-Direct Examination.

I am the witness who testified here yesterday. I was at my home this morning when some pictures were made

down there. Government's picture No. 9 was taken from the hotel where I live. It is taken from the front porch of the hotel through the vines there. I do not know whether it is through the vines or on the front steps but I think it is through the vines.

The automobile, shown on Government's picture No. 7, is not in the position the automobile was in the night that Bobby Hall was killed. This car, the back end sticks back too far. This car here the back end of it is too far around. It is supposed to be here because when I got up I went to the window and I could see around here (indicating on picture to the jury). In other words, the car was more parallel with this fence here or the sidewalk here.

The well is just on the other side of this car and the body was lying about, I would say, about eight or ten steps, out about eight or ten steps in the road from the well. That would put it well within my sight from the brick steps. The pool of blood was about the same place. The car did not block any of my view of what was happening.

This is where Mrs. Jernigan lives, over on this side of the square, approximately over here. She lives right in this house.

This picture, defendant's exhibit No. 3, purports to be a front view of my home, taken from the east looking towards my house. Those vines on the front are a summer vine. Kudzu is what it is. In the winter there are no leaves on it. In other words, my vision is not obstructed in the winter time. There were no leaves on it in January when this happened.

Re-Cross Examination.

This car in the picture is standing about where the car was standing but the back end, Bob, was around this way. The car was not parked like this car. It was not parked

like this one is now but the point or the location is the same, about the same place, I would say it was six or eight feet this side of the well. I would say this car in the picture is ten or twelve feet this side of the well. I did not have this car placed there this morning. The gentleman on the end of the table there had it placed. It was not done at my suggestion. He asked me how the car set. He said I am going to drive my car over there and park it. I did not even go out of the front door. I still stood at the house. He had told me before parking the car that he was going to do that for the purpose of taking this picture and he went and parked it and took the pictures. After he parked I told him that is where it was. I told him that then and there but he didn't change it. He did not change the manner and way it was parked before he took the picture. He drove over there and got out of the car and he stood over there on the other side of the well. When the picture was made, after he made the picture, he came to the house and that is when I told him that I didn't think this car here was parked like it was that night. He walked over to the house. The photographer was on the front porch. After I told him the car was not like it was that night, he did not undertake to make another exposure and change the location of the car, not that I know of.

I would say it is 30 feet or 30 steps rather from this corner here to this well, to that post.

I have had no conversation with Mrs. Jernigan or anybody else with reference to the location of the automobile since Mrs. Jernigan was on the stand. I have not mentioned to anybody about the location of the car. The first suggestion I had about that was this morning when this gentleman over here mentioned it. I told him how the car was parked. This morning when the Federal Bureau of Investigation agents were at my home is the first time that anybody had mentioned to me or I had mentioned to

anybody about the location of the car on the night of the killing. That was the first time.

Re-Direct Examination.

If the car had been placed as I said it was, like the other one was, I could have seen the well.

172 MRS. OLLIE JERNIGAN, 16th Government witness sworn, recalled, testified further on

Re-Direct Examination.

I am Mrs. Jernigan who testified here yesterday.

This picture, Government picture No. 3, this part leads to the front door of my home. The picture does not appear to have been made exactly from the front. It was made from kind-of the side front. This walkway here shown in the picture leads up to my front door. The well is right back here. This view from my front door and looking to the well shows that you can see the well from that point.

Government picture No. 1 is a view taken from my house to the hotel. It is taken from the driveway of my house. On this picture the well is approximately right in there. That is the well right there. From that point you have a clear view of the well.

This picture was made from the side front across the front steps right here. There is some shrubbery on the side and it was from the window on the other side of the scrubbery that I looked out. In other words, the window is over here and I was looking out of the window in this direction. The well is right here. (Indicating on picture before jury). I certainly had a clear view from this window here to the well.

Defendant's Exhibit No. 7 is a picture of my house, looking towards my house, and it is from this point that I was standing and could see the well. The window is right in there. This shows the view from my house to the well from the window. That is my house over there in this picture. This represents a view from Mr. Ledbetter's house across by the well and over to my house.

With respect to this automobile the automobile is approximately where it was that night, just about.

On this picture this is the street light right here and the car was parked between the well and the street light and the well on the other side of this car and he drove just below, about ten or twelve steps from the well toward this here, not out in the street but just a little, out towards the street from the well. The well is on the other side of the car and there was kind of a little bottom there, not exactly even with the walk leading in the Courthouse but it was right out in here somewhere, not so far out but just a little ways out.

Re-Cross Examination.

There is a little drain there where water usually stands when it rains and the contour of the land right there drains off down to in front of Mrs. Cox' house. That is not out in the street. It is not exactly even with the sidewalk but the little drain is out this way and it leads out this way too. It graduates after it leaves the edge of the sidewalk but the drain is kind-of sloped out this way, I think, into the street a little bit. The main flow of the well comes down here and here is a picture, that concrete thing there, where the overflow is where the water goes down in. Now, this part of the land there doesn't go out and extend beyond that concrete thing but just a little. I would say about two feet anyway, about two feet, two

or three feet. If it extended any distance at all, it couldn't be more than the distance between counsel and me.

As near as I could say, this car is standing about where the car was standing that night. The car was headed in just like it is there at just about that angle. It was at almost an angle like that. It was not horizontal with the wall but it was just parked in. It was not exactly straight. It was almost like that. The car in this picture is parked as near as it could be parked at the angle the car was parked that night, in my opinion. I think it is parked just as it was parked that night. I couldn't judge how far the car was from the concrete tank there because there was a shadow from the car to the well. I could see the people moving about on the other side. The light was high enough for me to see them.

This light in front of the hotel cast a shadow over the people and, of course, right beyond the car, and you could see them, but the shadow from the light that reflected on the car went on beyond the people or some rather but not enough that I couldn't tell. These men were not in the shadow of the car all the time. They were moving about all over the ground out there, over the entire radius of the shadow and out past the car some times.

I couldn't tell how many I saw moving out past the car. I didn't stay there so long and see everything but while I was standing there I could see several people moving about, but I couldn't tell who they were. I saw them move out of the shadow and move back in the shadow.

In my best judgment I didn't stand at the door and window together over five minutes. I closed the front door and went to the window. In the two times I didn't stand there over five minutes, not over five minutes all told. I then went back to my bedroom. This is the front bedroom and this is my bedroom here on the picture. It was back of this front bedroom. I was in this other bed-

-room. My living room is as long as from where I am over yonder (indicating). Then I turned to the right to enter another bedroom going in this direction and I was sleeping in the bedroom to the rear of that one. I do not know what size the bedroom is that I first entered after I left the bedroom. It was about the size of the section those people are sitting in. The next bedroom in which I slept was just a little bit larger than that. The bed in which I slept in this room was opposite the door adjoining the next room. It was located like this and the other bed-room was like this (indicating). The bed was not across the room. It was right at the door.

I closed my front door when I went in, in fact closed all the doors and windows and after I got into my bedroom I could still hear the licks, even after I put my head under the cover.

It is between 50 and 75 yards from my house over to the point where I saw these people. That is my best judgment. That is the distance from the steps of my house to where I saw them at the well. I would say it is between 50 and 75 yards.

Mrs. Cox lives in this house right here (indicating on photograph). She is the Postmistress at Newton. She lives in the house right next to the post office, that is north of the post office. This picture shows the home where I lived at that time, also the post office, the well and Mrs. Ida Mae Cox' home.

Re-Direct Examination.

-I would say Mr. Ledbetter's porch was closer to this automobile than mine.

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MISS ANNIE ELLIS, 20th witness sworn in behalf of the Government, testified on being recalled

on

Re-Direct Examination.

I am the one who testified here yesterday. This Government picture No. 6 was made from my bedroom window facing the jail. This is the jail and this picture is made from my bedroom window. That is where I was the night this occurred. This is the window from which I was looking and saw the things I testified about. I was there this morning when these pictures were made. A man can be seen here at this point.

This picture, Government No. 2, was taken from my front bedroom facing the Court-house and this is the location where the car was parked. I could see from that point to the car. I can see through here. There is a man standing there in this picture which was made there this morning.

On January 30th when this happened there was no foliage on these trees and bushes and things. In other words, in January and February, this was more open than it is now and it was no trouble to see through there. This was also cut back and it has grown two or three feet, but even without cutting it back the foliage was nothing like as heavy.

Re-Cross Examination.

I do not know the names of the shrubbery around the front of my home. I know there are some nandinas and verbinas and arborvitaes. I also know there is some pittosporum in the front but not in here (indicating on picture). I do not have any pittosporum to the rear of my home and not any between my room and the jail. There

is pittosporum on the front. I do not know the names of the other shrubbery. I do have two kinds of evergreen shrubbery in the front of my home, directly in front. That kind of shrubbery does not extend on down my coping.

This is my front bedroom window which we do not use, I mean do not use that room, as shown in Defendant's Exhibit No. 10. This shrubbery here is along the porch, that is the side of the porch, but it doesn't extend out over three feet around the coping of the porch. This was not the window that I was looking out of that night.

This Defendant's Exhibit No. 13 does not show the same window—O yes it is the same window just shown me in another photograph. That is the same window only taken at a different angle and a different distance; but we do not use that window. I cannot say what kind of shrubbery this is right in here. It is not evergreen. That there is an arborvitae, which is an evergreen. That is out in the corner of the yard. It does not obstruct any view from the house. This is not the corner of the yard between the jail corner and my house. This corner goes down to the front of the building and you see the jail sets back here. This is the front of the building. You see, this is the coping around the yard. This is the east side of my room or the side next to the jailhouse. That is the front part of the house but you see our bedroom extends on farther back and this doesn't have anything to do with our bedroom. Our bedroom is back here (indicating on picture). Our bedroom comes off in an "L" next to the jail. That is the east side of my home. This shrubbery over here is not between the jail and the "L" of our home. It is out this way. There is a distance between the shrubbery. It is out in front of the building-like, a distance I don't know. Mr. Short knows as much about it as I do.

Mr. Short, if I may now, this is the picture that is taken with the view from my bedroom and not here, because you are standing behind the shrubbery. You see how

plain the view is from my bedroom to the jail. This picture was taken on the front and the shrubbery is on the front but not between my room and the jail. It is only in the front of the yard. This picture was taken just outside of the window of my bedroom and right in here is where I saw what little I said I saw. What I saw I saw from right in here.

Re-Direct Examination.

On Defendant's Exhibit 13, this is my room back here which extends out, as Mr. Short says, on the east side, but back of this shrubbery; and there is some distance between the front and back of the house. I had a plain view of the jail as this shrubbery is all in the front part of the yard. The window I saw out of is back here and the view from that point to the front of the jail is clear.

Defendant's Exhibit No. 8 here shows my home and over here is the jail. My room is back here and I could see straight across here with a clear view.

Government rests.

(In the Court's Chambers.)

Mr. Hager:

Your Honor; we have a motion for a directed verdict on both counts of the indictment as to all defendants and we have reduced it to writing and Mr. Kemp will read it:

178 DEFENDANTS' MOTION FOR DIRECTED VERDICT.

The defendants move the Court for a directed verdict because:

(a) The government has failed to carry the burden in said case and has failed to prove the allegations of said indictment and has failed to prove the allegations of either count of said indictment;

(b) The evidence is insufficient to form any issue for the jury to determine;

(c) The evidence fails to prove any offense or offense cognizable in this Court and fails to prove any offense or offenses of which this Court has jurisdiction.

(d) The evidence fails to prove any crime against the laws or statutes of the United States.

(e) The evidence fails to prove any act or acts which constitute a violation of any statute of the United States.

(f) There is a fatal variance between the allegations of Count Two (2) of said indictment and the evidence introduced, for that there is no proof that the defendants acted under any law, color of law, statute, ordinance, regulation or custom of the State of Georgia, County of Baker, or Municipality of Newton.

(g) The evidence fails to prove that the defendants deprived Robert Hall of any right, privilege or immunity granted or secured to said Robert Hall by the 14th Amendment of the Constitution of the United States.

(h) There is a fatal variance between the allegations of Count 3 of said indictment and the evidence, for that the evidence fails to show or prove that the defendants conspired among themselves or with anyone else to violate any statute or law of the United States.

(i) The evidence is insufficient to prove that the defendants conspired among themselves or with anyone else to violate any statute or law of the United States.

(j) The evidence fails to prove that the state or any sub-division thereof ever sanctioned the act or acts of the defendants in taking the life of Robert Hall.

(k) The evidence fails to prove that Robert Hall was subjected to different punishments, pains or penalties by reason his color or race, than is prescribed for the punishment of citizens.

The Court:

All right, the motion is overruled.

Mr. Hager:

Your Honor will allow me an exception.

The Court:

Yes.

(Returning to the Courtroom.)

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MR. M. CLAUD SCREWS, one of the Defendants and 1st witness sworn in behalf of Defendants, testified on

Direct Examination.

I do not think I have been sworn. (Witness sworn) My name is Claud Screws. I hold the official position of Sheriff of Baker County. This is the seventh year I have been Sheriff of Baker County.

On the 29th day of January 1943 I held a warrant for the arrest of one Bobby Hall. He was charged with stealing a truck tire. I am acquainted with Mr. T. A. Riley. He is Justice of the Peace of that district. I do not recall the number of it exactly. I have seen his signature and I think I am familiar with his signature. I also think I know Mr. George Durham's signature. The top of this warrant exhibited to me bears the signature of George Durham and, in my opinion, this signature is that of T. A. Riley.

Mr. Riley does not fill out all of his warrants. I fill out some of them. I do not know who filled out this one or I am not sure. I might have filled it out but I do not recall.

I am familiar with this book here. That is T. A. Riley's criminal docket. Since the Welfare Office has been in Mr. Riley's office, the Justice of Peace's office, this book has been laying on my desk, in my office. I have made some entries in this book.

On page 1 of this docket it looks very much like I made that entry. I can't see too good but it looks very much like it.

I think this is my writing on page 6. I think that is mine. To the best of my judgment, I put this entry on page 19 of the criminal docket of the Justice of the Peace. My best judgment is I put this entry in the book up here on page 55. I am not positive about that. I do not think I made the entry on the lower half of the page.

This is my writing on page 76, I think. I think that is mine. On page 77 it appears to be mine too, page 82 appears to be mine and page 83 the same thing. I really do not know whose signature this is here where it says "dismissed".

The entry on page 84 appears to be mine.

It was a custom for me to make these entries for Mr. Riley. During the last year or two I have had working

in my office a secretary, Miss Edna Fisk and as deputies I have had Mr. Roy Salter and P. G. Wilson. Mr. Salter has, I am sure, made some entries in the book too.

The Welfare Department occupies Mr. Riley's office now in the Courthouse. They have been occupying his office ever since we have had a Welfare Department. I do not know how long that has been. I have no idea how long that has been. It has been longer than a year or two. I would say Judge Riley lives a mile from the city limits and a couple of miles from the Court-house.

I received this warrant some time a little after first dark, in the early part of the evening because I had been out in the country and came back. I had been out in the country that afternoon. I went down to Mr. H. T. Rentz, County Commissioner of Baker County, and arrested a darkey down at his place between sundown and dark and it was some little bit after I got back to town, some little bit after dark; and pretty soon after I got back I received this warrant for the arrest of Bobby. But I was doing some work in the office, I did not get to go serve it. Around between 11:00 and 12:00 o'clock Mr. Kelley and Mr. Durham, Mr. Jones, was in my office. I told Mr. Jones I had a warrant for the arrest of Bobby Hall and asked him if he would go and arrest him and take my car and asked Bob Kelley would he go with him. They said they would and immediately they left to go get him.

About 30 minutes, I guess, after they left I walks out to the well to get me a drink of water. They drove up to the well and I asked them, I believe I asked them, I said "Did you get him?" or I saw him in the back seat. I asked them "Did you get him" or Frank said "Here's your man" or something. I do not recall just exactly what words was spoke right then. I walked around and I tried to turn the door on the left side of the car and it seemed to be hard to open or locked or something; so, I walked around on the right-hand side of the car, walked around back of

the car and opened the door. I opened the door and I said "All right, Bobby, get out" and I noticed he wasn't in any hurry to get out but when he, when I did see him come out, I saw something coming out ahead of him like that (indicating) and I discovered it was a gun; and he said "You damn white sons"—and that is all I remember what he said. By that time I knocked the gun up like that and the gun fired off right over my head; and when it did he was on the ground by then and me and Kelley and Jones ran into him and we all were scuffling and I was beating him about the face and head with my fist. I knew Jones had a black-jack and I told him to hit him and he hit him a lick or two and he didn't seem to weaken and I said "Hit him again." When he fell to the ground, we didn't hit him on the ground.

I told Jones and Kelley to take him up and let's carry him to the jail. They took him up and I walked on ahead of them on into the Courthouse into the office. The hall goes right by my office door, got the key and they went and put him in jail. I didn't go any further than my office. They came back to the office and I asked them, I said "What sort of shape is he in?" Jones, I believe it was or one of them, said "Well, he is in bad shape." I said, "Well, I had better call the hospital and get an ambulance sent down here for him." I went to the phone and I called Dr. J. M. Barnett or the hospital one. I do not remember which I called first but I called both of them and I told Dr. J. M. Barnett to treat the patient and send me the bill, sent him on to the hospital and told the hospital to send the ambulance down there for him, which they did.

At no time when I saw the deceased or Bobby Hall did he have any handcuffs on him. I would be afraid to say how long it was before he was beaten to where he quit resisting us or quit trying to assault me because in a time like that you would be a poor judge of time, I think.

I imagine Bobby Hall weighed 175 or 180 pounds, maybe more. I wouldn't know how old he was because you can't tell about a darkey's age much. He was a young negro though. As to whether he was an able-bodied man, there wasn't a thing in the world wrong with him as far as I know. I have been knowing him all his life.

Cross Examination.

I am not sure, colonel, whether I wrote the body of this warrant exhibited to me or not. I do not recall whether I did or not. I do not know my handwriting too good because I can't see but very little through this (witness using magnifying glass). As to why I can recognize Judge Riley's signature and Durham's, it is wrote right smart larger than the body of that warrant.

I do not remember whether I did or did not tell Mr. Crawford and Mr. Calhoun of the FBI that I did not know who wrote this warrant. I do not recall as I told them that I did not write it. I just don't remember. They got a written statement from me.

I told counsel that I probably did make the entry on page 75, that it looked kind-of-like-it. The writing on this warrant doesn't look larger to me than the writing that made the entry in this book. I do not know as I could see it better with better light. I just wouldn't know.

I did not identify this entry on this Justice of Peace's docket on page 75 as the docket entry of this warrant. I did not do that. I do not recall which pages I was identifying here a while ago because counsel was turning the pages. I do not know whether the entry of this Bobby Hall warrant here on page 77 was what I was talking about. I do not recall whether I seen the entry on the Bobby Hall warrant. I do not remember seeing Bobby Hall entry on there. I see it now. I probably did make

that entry. It is probably my entry. I wouldn't say positive.

I testified a while ago that I had made a number of entries in this docket for the Justice of the Peace. I certainly do not recall ever telling Mr. Calhoun and Mr. Crawford of the FBI, when they interviewed me and had these docket sheets and this warrant and were talking to me about them, that I had never made an entry in the docket, or anything like that. If I told them that, I do not remember it. As to there being any reason why I should not remember it, like everybody else I do not remember everything. I knew at the time they were talking to me that this Bobby Hall killing was under investigation. They talked to me about it. As a matter of fact, I was the first man they talked to about it, so they said. They talked to me several different times. They talked so much until I couldn't keep up with all of it to tell you the truth. I say that if I made that statement I do not recall it.

I won't be positive neither way as to whether I wrote this warrant. My mind has not changed about it since I heard the handwriting expert this morning.

I had known Bobby Hall ever since he had been grown. Judge Riley lives down the highway No. 91 towards Colquitt. I sure do not know who owns the place that he lives on. I guess it is Willie Hall, the father of Bobby Hall. I do not know, as a matter of fact, that Will Hall furnishes him a place to live, a place for Judge Riley. I do not know that.

As to Bobby Hall being a mechanic, I saw him with mechanics' clothes and working on automobiles. He never did do any for me. I have never seen him work on tractors. He worked in another man's place of business there. Right at that particular time I think he had a place where he carried on his business. He was in and out there.

He had just moved from his home, I think, down there where he had been a mechanic.

He had been born and raised there around Newton, all except some time he lived over in Colquitt, I mean in Miller County, which is 20 or 30 miles from Newton. I think it is true that he had lived in Baker County for the past several years.

I said I got this warrant some time after dark. I did not say I got the warrant about dark, I said some time after dark. The reason I didn't go and serve it when I got it was because I was working on some tax in the office—the tax receiver, I have all of the delinquent tax in my office, and I was working on that at that time. I started to work on the tax books shortly after I came back from out in the country.

As to the emergency that I decided to have Bobby Hall arrested about midnight, that was the first time I had had time. As to whether I thought he would be out of pocket the next morning, colonel, my custom is down there when I get a warrant to serve it. It don't lie in my office. I believe anybody in the county will tell you that. I was fixing to serve this one. I had it served.

I walked out in town a time or two that night. I think I went to Joe White's filling station. The best I remember I think I did. I think I also went over to Johnny West's place. I do not recall whether Kelley and Jones and I went over there together or not. We met up over there. That was around 9:00 o'clock, I imagine, probably between 9:00 and 10:00, about 9:00 or 10:00 o'clock, something like that. It was not from there that I sent Jones and Kelley on out for Bobby. We three did not leave there together. They went out ahead of me. I do not know where they went. I did not say anything to Jones at that time about serving this warrant. I did not ask Kelley anything about helping me or helping Jones serve it at that time.

There was no emergency about the service of this particular warrant that I know of. When I left Johnny West's place I went back to the office. I did not take a drink over there. That is a bar-room, Johnny West's place is but you do not have to drink because you go in there. I did not take a drink in there. There was a little dancing going on in the back-end. I didn't hear no pistol. I haven't heard no pistol over there. There was a jook organ going and I am sort of hard of hearing anyway, possibly a gun fired but I didn't hear it. That room is not so large.

I do not recall Johnny West telling me I had better go on home and had better not try to go out and arrest anybody. I say he did not tell me that. I remember that he didn't tell me that. If me and Johnny talked any I do not recall it and if we had any conversation at all I do not recall it. I did not see Frank Jones and Jim Bob Kelley drink any in there.

Explaining the purpose of our visit there, the three of us there at that place at 9:00 or 10:00 o'clock at night, the jook organ was just playing and I walked around there, didn't especially have any business.

According to my best judgment it was about 10:00 o'clock probably when I left there. I wouldn't say exactly but maybe some time between 9:00 and 10:00. I do not know exactly how long at that time I had had the warrant in my possession. I would say two hours at least. I would say around two hours when I could have served it if I had had time. I had been in the office working of the time. I think I went to Joe White's before I went to the office the best I remember. Then, I went from my office to Johnny West's. I went out by the well to Johnny West's.

About my feelings toward this negro in connection with his efforts to get the pistol, I did not feel hard towards him a bit, colonel. I did not have any ill feeling towards him because I had hoped him out of several tights, paid a fine over here at Moultrie to the Sheriff.

about a year ago; paid it with my own money and he paid me back a dollar or two at a time. He paid me back. I got the Sheriff to settle the trouble just for the costs over there.

I got a letter from Mr. Robert Culpepper about the pistol or I think I remember getting a letter the day that this occurred or the day before, something like that. At that time I had already been called before the grand-jury about this pistol.

It was around 12:00 o'clock, the best I remember—I wouldn't be positive—when I sent Jones and Kelley out there, 12:00 o'clock at night. I do not know why Jones and Kelley happened to come over to my office at that time, except just saw the light in there. Well, Kelley was talking to me, I had a little piece of property over there not far from where he lived and he was wanting to see me about buying some property. That was around 12:00 o'clock at night. He had said something to me about it before that time. He had been talking to me some time prior to that. We did not discuss that at Johnny West's or if we did I do not remember.

I would say Jones and Kelley were gone 20 or 30 minutes before they brought this boy back, though I am not sure, would not be positive. When they rolled up there, Kelley and Jones were in the front seat and Bobby Hall on the back. I saw the shotgun and when I saw it, he was coming out of the door with it.

My car is a Mercury, a four door sedan, closed car, four-door sedan. As to what happened there at the well at that time; they drove up and I went to open the door on the left and for some reason it wouldn't come open; so I walked right around behind the car on the right-hand side of the car and opened the right-hand door and told Bobby, I said "All right, Bobby get out" and I noticed he was just a little bit slow about getting out; and torectly (directly) I saw the shotgun barrel come out ahead. At

that time Jones had walked around sort of behind me. I do not recall whether Kelley had got out of the car then or not, I just do not recall. I did not see where the negro got the shot gun from. When I saw it, it was coming out ahead of him. I was standing right there at the car door sort of behind the door. I just sort-of opened the door and stepped behind it. I grabbed the gun as soon as I discovered it. The barrel of the shotgun was the first thing I saw. It came out ahead. I did not have a black-jack that night. I never owned one in my life. I do not ever recall owning one in my life. I did not have a pistol. I did not even have my pistol. It was in the office. I sure didn't have my pistol that night. It was in the office.

Like I said before, colonel, I would be afraid to say exactly how long that thing lasted out there, not very long. I do not know. It was kind of a busy time with me. There were three white men there and one negro, three strapping men.

I deputized Kelley to go out there. I asked him to go.

About process or warrant to take or keep Bobby Hall's pistol the only thing I had was the order that the Judge gave me, Judge of the Superior Court. He issued only an oral order in that case. He told me orally. He told me in his chambers in Camilla on Monday after the pistol was taken from Bobby on Saturday night. Now, as to the dates, I do not remember. It was on Monday after it was taken on Saturday night. I sure don't remember about when that was, some time in December, but I don't remember what time.

I took a defendant to Camilla for him to plead guilty before the Judge and he entered his plea and I talked to the Judge there in his chambers. The Judge told me—I told him I said "Now I know these darkeys are a little inclined to be biggety" and one thing and another and I

said I want to explain to you just how it happened. The Judge told me to keep it until he sent an order for it. He told me that in Camilla in his chambers. I don't think there was anybody else present. I think the Clerk and the defendant had just stepped out of the door.

I did not go down to Camilla a few days ago and talk to the Judge about this situation, about this order business. I have not talked to the Judge anywhere. I was in his presence probably when he was talked to, in the Judge's presence. Bob Short was who the Judge was talking to in my presence. I do not recall when that was but it was one day last week, I believe.

Q. Now, as a matter of fact, didn't Judge Crowe tell you—

Judge Crowe did not tell me or my counsel or both of us that he never made any such order or gave me any such order as I referred to, last week. He did not. Judge Crowe did not tell me that. He says to my attorney and I was standing in their presence, he said "Well, I wouldn't want you to put me on the stand." He said "I wouldn't want you to put me on the stand but I do remember several different occasions of discussing the same matter with the Sheriff but I would not recall whether it was this time or the other time or which time it was." When we talked with Judge Crowe about this Bobby Hall pistol last week, Judge Crowe did not tell me and my counsel that he had never given me any order or said anything to me about this Bobby Hall pistol.

This conversation took place right out here in Albany, coming from the Court-house. He was coming from the Court-house over there to where the street runs by them hotels. I do not know what the name of the street is. The Judge was talking to Mr. Short in that conversation in my presence and Mr. Short was asking him about having

him subpoenaed to testify about this particular case; and he said "Well, I had rather not get on the stand." He said "I do remember a number of times that I discussed things like that with the Sheriff but I wouldn't know positively." I am talking about the Bobby Hall pistol. But the Judge said "I wouldn't know positively which time it was."

The Judge did not tell me that he had no recollection of ever giving an order to me in this case. He did not say that. He didn't say that he did give me one. He said "I remember giving you them sort of orders time after time but I don't remember who it was or when it was" or words to that effect.

When I was down at Joe White's filling station, I saw Cal Hall, Jr. I think I had a conversation with him. I think probably the best I remember I did have a conversation with Cal Hall, Jr. I do not know as I remember what I talked to him about.

Re-Direct Examination.

I never have made a statement to anybody that the damn negro had lived long enough.

191 MR. R. L. HALL, 2nd witness sworn in behalf of the Defendants, testified on

Direct Examination.

My name is R. L. Hall. I am acquainted with Mr. M. C. Screws, the sheriff of Baker County. I recall the time or occasion that Bobby Hall was killed down at Newton. Between 9:00 and 10:00 o'clock that night or some time during the night I saw the Sheriff at my home. He came there to get me to help him go arrest a negro. I did

not go with him because I had some hands working to my house fixing a fire place.

I observed the Sheriff's condition at that time. He just came to the house and asked me would I go help him arrest a negro, this Hall negro you are talking about, and so far as his condition he looked as normal as I have ever seen him. He got near enough to me for me to smell his breath if he had had liquor on his breath and I did not smell any.

Cross-Examination.

It was around 10:00 or maybe a little after 10:00 at night when the Sheriff came out there. I live in Newton in the town there.

I know Mr. Edwards and Hot-Shot Bailey. I think they were in jail there at Newton at the time this killing took place, waiting to be carried off to serve their sentences, and they were later taken away. I think they were carried first to Reidsville and then transferred to Cedartown. There is a camp up there in Cedartown.

I did not make a trip up to Cedartown and get these two boys out of the chain-gang. I didn't get them out. I got them out and paid their fine, it is true. I went up to Cedartown. Off handed I couldn't tell you when that was, with the exception of one thing. I know it was the same time we had just gotten through on the farm breaking up land and that's the reason I went up to see them.

I remember when the grand-jury met in Macon. I couldn't recall but it might have been immediately prior to the meeting of the grand-jury when I went and got them. The District Attorney's office in Macon did not have process in the Warden's hands at Cedartown to bring these two men to Macon as witnesses at the time I got them. The Warden up there certainly did not tell

me that he had process to send them to Macon as witnesses.

I do not know how far it is from Newton up to Cedar-town. I can tell about how far it is. I am sort of half-way guessing but it is about 275 miles—not 300 but about 270 miles. I made about a 500-mile drive for these boys when I went up there to get them. I can explain the details why I went up there if counsel would like to know.

The Sheriff and I are friends, I think. There had not been any grand-jury subpoenas scattered around Newton when I went up there, I don't think. I am positive they had. I could possibly be wrong but I am positive that there hadn't been any subpoenas in Newton at the time I went up there. Before I went up there I went to the Prison Commissioner's office to get permission to go see them and they can tell you. Mr. Mann could tell you when I was up there and you all know when you issued the subpoenas.

Re-Direct Examination.

I told the District Attorney when he was questioning me a while ago that I could tell him the details of why I made this trip. The reason I went there was because Hoke Edwards, one of the boys in the penitentiary, is the son of my overseer out on the farm, and so he is the one that asked me to try to get him out and pay his fine and he would pay me, would return the money in the fall. So, we had gotten through laying-by land and that's the reason I knew the approximate time of year I went up there. So I knew if he would come back to work on the farm, which his father thought he would, I had a hand at that time that I could put with him and I went up there to check, to see if I paid his fine if he would come back to work and if he didn't I could use this other hand as well as this other boy up there; and I worked both boys when

I paid their fine. In fact, as every farmer knows, labor is short. I certainly would have paid his fine in the first instance if Judge Crowe had permitted it. That's the reason I did not in the first instance, is that Judge Crowe would not permit it.

Re-Cross Examination.

Some one went with me on this trip, M. W. Irwin and nobody else. Hoke Edwards and his wife are living with me now on my place. Burke and his wife, Burke worked for me, I reckon, a month and a half but they are not there now.

I did not bring the Edwards and Bailey boys back from Cedartown. I do not know who actually brought them back when they were released. I paid their fine up there. As to why I didn't get them then, I didn't pay it the same day I went up there. In fact, it was a good bit, a little bit after that when I paid the fine. I paid the fine in Newton.

Frankly, after the District Attorney has mentioned their names, I think it was Mr. Wilkinson and Mr. Salter who went and got these boys. Salter is a Deputy Sheriff or was at that time. I do not know whether Wilkinson was a Deputy Sheriff or not. They were actually brought back to Newton by the Deputy Sheriff or by two Deputy Sheriffs if Wilkinson is one. I did not pay for the trip up there.

195

MRS. CLYDE EDWARDS, 3rd witness sworn in behalf of Defendants, testified on

Direct Examination.

I have not been sworn. (Witness sworn.) My name is Mrs. Clyde Edwards.

I was present at a time when Mrs. Joe White visited the hospital here in Albany and came back to the filling

station and made some statement with reference to Mr. Claud Screws, who was then in the hospital with his eyes. I heard what she said. They were asking me how Mr. Screws was and I told them as near as I could what kind of condition he was in and I was telling them how sorry I was for Mr. Screws; and she said—Can I tell what she said? She said "She wasn't sorry for the son-of-a-bitch at all", that she "didn't want to see him blind but she would enjoy seeing him a corpse."

Cross Examination.

I had been up to see the Sheriff at the hospital that same day.

Re-Direct Examination.

I did not say she had been to see the Sheriff, I had been.

MR. HARRY McGAHEE, 4th witness sworn in behalf of the Defendants, testified on

Direct Examination.

My name is Harry McGahee. I am acquainted with Sheriff Screws. I am acquainted also with Mrs. Joe White. I recall about the time the Sheriff got his eyes hurt. I have heard Mrs. White make some statement with reference to the Sheriff since that time.

I was at the service station or drove up there about five minutes after they carried the sheriff to the hospital and she drove up, had come from Albany, and she asked what the excitement was about and I told her the sheriff had just gotten shot and she said "Well, I hate that I wasn't

here to have seen that", said "I have been wanting to see something like that a long time and I had to be out of town at the time when that happened." And I spoke about a puddle of blood down there and she said I am going to drive down there and look at that.

Cross Examination.

I live in Newton. I work turpentine, manager of turpentine place there for the J. B. Davis Company. There was somebody else present there. Mr. Purd Odom's wife was present. She was with Mrs. Durham or Mrs. White. What I have related was practically all that was said at that time. There was nothing mentioned in that same conversation about how the Sheriff killed Bobby Hall. She did not mention Bobby Hall at all then.

196 MR. EDGAR CROSBY, 5th witness sworn in behalf of the Defendants, testified on

Direct Examination.

I live right in the middle of Newton I call it and the filling station I operate is just across the street from me. I would say the filling station is about 60 yards from the Courthouse. You go down state road 91 or 37, they both join and come together, you go south down that highway from the Courthouse to my service station. If you left the well or the Courthouse going to my filling station, you would go south. If you went to Mr. Ellis' home from the well or from the Courthouse you would go north, wouldn't you go north in the opposite direction that you would go if you were going to my service or filling station.

I recall the occasion when Bobby Hall was killed there in Newton near the artesian well. I had been hunting

that night. I went down back of the warehouses. Down back of the warehouse there is a swamp. You can go as far as you want to up that swamp. I didn't go but about a mile.

In December I will have been living in Newton seven years. I am familiar with the street lights in Newton. I said I remembered the night that Bobby Hall got killed and that night, I remember, I went hunting. Coming back from hunting I came up kind-of by the jail there, come by the post office and by the jail. The street light out in front of the post office was not burning that night. The reason I recall I went in after my mail and happened to have my flashlight in my pocket and I turned it on to get up the steps.

When I left the post office I went by the well and got me a drink of water. I then went in the rest-room in the Court-house, which is right next door to the Sheriff's office. There was somebody in the Sheriff's office at that time. I saw a light on in there when I went in and when I come out I went in and talked with him. He was by himself. I would say that was about 11:30, somewhere about 11:30. As to observing his condition, he was working on his books, that is all. I didn't stay there but just a few minutes. I did not smell any whiskey there on the sheriff when I went in the office and talked to him.

Cross Examination.

I had not had a drink. I go hunting four or five times a week and hardly ever touch any whiskey.

198 MR. FRANK JONES, one of the defendants, and 6th defense witness, sworn, testified on

Direct Examination.

By Mr. Short:

Q. Is your name Frank Jones?

A. Yes, sir.

Q. Mr. Jones, I want to ask you just one question and what in rebuttal to testimony brought out this morning by Mr. Willingham: Did you hear the statement made by Mr. Willingham relative to having had a conversation with you?

Q. Did you hear the statement of Willingham this morning?

A. I did.

Q. Was the statement made by him true or untrue?

A. Untrue.

Mr. Davis:

Come down sir.

199 MR. M. A. McRAINEY, 8th witness sworn in behalf of defendants, testified on

Direct Examination.

My name is M. A. McRaney. I am acquainted with Sheriff M. C. Screws. I have known him about thirty-five years. I am engaged in the farming and turpentine business.

Q. Are you acquainted with and do you know the general reputation and character of Sheriff Screws in the community in which he lives for truth and veracity?

A. I do.

Q. Is it good or bad?

A. It is good.

(No cross examination)

MR. L. A. ETHRIDGE, 9th witness sworn in behalf of the defendants, testified on

Direct Examination.

My name is L. A. Ethridge. I have been sworn. If I live to next February it will be 68 years I have lived in Baker County. I am acquainted with Mr. M. C. Screws, the sheriff of the county. I have known him ever since before he was grown, I suppose 20 or 25 years.

Q. Do you know his general reputation and character in the community in which he lives for truth and veracity?

A. Good.

Q. You do know it and it is good?

A. Yes, sir.

Cross Examination.

Q. Is that all you are undertaking to testify about, Mr. Witness?

A. I understood him to inquire about his character and veracity.

200 MR. DAVID JONES, 10th witness sworn, in behalf of the defendants, testified on

Direct Examination.

My name is David Jones. I live in the Western part of Baker County. I am in the farming and merchandising business. I have resided in Baker County since the winter of 1901. I am acquainted with Mr. Claud Screws, the Sheriff of the County. I have been acquainted with him.

I reckon so far as I remember, about 15 or 20 years, something like that.

Q. Are you familiar with his general reputation and character for truth and veracity in the community in which he lives?

A. I think so.

Q. Is it good or bad?

A. Good.

MR. CLARENCE BRYAN, 11th witness sworn in behalf of defendants, testified on

Direct Examination.

I have been sworn. My name is Clarence Bryan. I live in Baker County. I have lived in Baker County ten years. I am acquainted with Mr. Claud Screws. I am engaged in the farming and mercantile business. I have known Mr. Claud Screws ten or twelve years.

Q. Do you know his general reputation and character in the community in which he lives for truth and veracity?

A. I think so.

Q. Is it good or bad?

A. Good.

MR. J. B. HALL, 12th witness sworn in behalf of the defendants, testified on

Direct Examination.

My name is J. B. Hall. I live in Newton. I have lived in Newton or Baker County all my life. My business is

that of a merchant and farmer. I live in the City of Newton. I know Mr. Claud Screws, the Sheriff of Baker County. I have known him all my life.

Q. Do you know his general reputation in the community in which he lives for truth and veracity?

A. Yes, sir.

Q. Is it good or bad?

A. Good.

201 MR. A. L. BUSH, 13th witness sworn in behalf of the defendants, testified on

Direct Examination.

My name is A. L. Bush. I live in Baker County. I have been sworn. I have lived in Baker County all my life. I am farmer and Tax Receiver of Baker County. I know Mr. M. Claude Screws, the Sheriff of the county. I would say I have known him about 20 years.

Q. Do you know his general reputation and character in the community in which he lives for truth and veracity?

A. Yes, sir.

Q. Is it good or bad?

A. Good.

MR. L. D. LAWRENCE, 14th witness sworn in behalf of defendants, testified on

Direct Examination.

My name is L. D. Lawrence. I have not been sworn. (Witness sworn.) I live in Baker County. I have lived

in Baker County about 37 years. I am acquainted with Mr. M. Claud Screws, the Sheriff of the County. I would say I have known him 20 years, about that.

Q. Do you know his general reputation and character in the community in which he lives for truth and veracity?

A. I would say it is good.

Q. Do you know it?

A. Yes.

Q. And you would say it was good?

A. Yes, sir.

MR. MORGE MANSFIELD, 15th witness sworn in behalf of defendants, testified on

Direct Examination

I have been sworn. My name is Morge Mansfield. I live on the Pineville Plantation, Baker County. I have lived there right about 15 years. I look after the farm interests there. I am acquainted with Mr. Claud Screws, the Sheriff of the County.

Q. Do you know his general reputation and character in the community in which he lives for truth and veracity?

A. Yes.

Q. Is it good or bad?

A. Good.

203 JUDGE CARL CROWE, 38th witness sworn in behalf of the Government, called in rebuttal, testified on

Direct Examination.

I am Judge Carl Crowe. My official position is Judge of the Superior Courts, Albany Circuit. Baker County

is within my judicial circuit. January 1st will be three years that I have been on the bench.

I am, of course, acquainted with Sheriff Claud Screws of Baker County.

Q. I want to ask you, Judge, whether at any time in December 1942 you gave Sheriff Screws an order to hold a pistol that belonged to a negro Bobby Hall of Baker County?

A. I would say no and explain to you why I say that. Last week one of defendants' counsel and the defendant asked me with reference to an order to hold a pistol belonging to a negro named Bobby Hall. I told them that I had no recollection of having any conversation, much less issuing any order. I have no recollection of any conversation with reference to a pistol and Bobby Hall. My answer is that I did not issue any such order either oral or written. Mr. Screws said in that conversation that it was the same day that a man named Huckaby pleaded guilty. I told him I remembered Huckaby, remember the conversation because the indictment against Huckaby was obtained when I was Solicitor-General and I was disqualified, but he waived the disqualification. I remember the conversation with Huckaby and about the sentence of him, his plea and everything, but I told them that I had no recollection of having any conversation whatsoever with reference to Bobby Hall then or at any other time.

I never had any conversation with the Sheriff with reference to Bobby Hall that I have any recollection of whatsoever.

Cross Examination.

I do not recall that Mr. Short, when he approached me with reference to the Bobby Hall matter, told me that he would probably want to use me as a witness. I assumed,

from the conversation that probably that is what it was but I do not recall his stating that.

Q. I also asked you if you had any recollection as to whether or not you had instructed the Sheriff not to deliver the pistol to Bobby Hall and wasn't your answer this, Judge, "Bob, I do not have any definite recollection as to this particular case"?

A. I have no independent recollection.

Q. Or independent recollection?

A. That's right.

Q. "That I have no independent recollection of this particular case"?

A. That's right.

Q. "But I have on a number of occasions instructed the Sheriff not to deliver pistols"?

A. I gave two instances in which the matter of pistol had been talked to me, two instances, one with the sheriff —no, one with a man who came to see me with reference to a pistol and one when the sheriff saw me about a month ago or something like that.

Q. Didn't you say, Judge, that you were not in position to say that you did not tell the Sheriff not to deliver it but you just had no definite recollection?

A. I said I did not have any recollection. Probably I did make that statement.

Q. Well, you said something to the effect that probably you had instructed him?

A. No, I did not say that probably I instructed him to that effect. I said I had no recollection about having instructed him to that effect at all.

Q. No independent recollection?

A. That's right.

Q. As a matter of fact, you could have done it, since you have all of these matters coming before you and you pay no particular attention to it, couldn't you Judge?

A. I wouldn't say that, Mr. Short.

Q. You wouldn't say you could have done it and not remember it?

A. No, I wouldn't say. Looks like to me I might have had some recollection in view of the fact that I remember all about the Huckaby business and if it was at the same time as that looks like I would have some kind of recollection of it.

Q. It seems to you that you would have some kind of recollection?

A. Yes, sir, in view of what subsequently did happen at least.

Re-Direct Examination.

Q. But you do know, Judge, that you did not issue any order to the Sheriff about Bobby Hall's pistol?

A. Yes, sir, as I have stated.

The Court:

Very well, anything else?

Mr. Davis:

That is all.

The Court:

Both sides close? Well, let me see counsel then for a minute or two. Gentlemen of the jury, you will just remain in the box, if you please.

(In the Court's Chambers.)

Mr. Hager:

I want to renew the motion that I made yesterday on all the grounds.

The Court:

All right, that will be sufficient, won't it? I think the District Attorney would agree that is sufficient without undertaking to make a point on it.

Mr. Hager:

I renew it on all the grounds at the conclusion of the case and ask for an exception.

The Court:

Yes, the motion is Overruled and your exception is noted.

(Returning to the Courtroom.)

Mr. Davis:

If Your Honor please, the Government waives the opening argument and reserves the conclusion.

The following documentary evidence was introduced by the Government:

1. Letter from Robert Culpepper, Jr., Attorney at Law, Camilla, Georgia to the defendant M. Claud Screws, dated January, 28, 1943, and reading as follows:

Bobby Hall was over to see me with reference to regaining possession of a 38 Colt Automatic Pistol which the nightwatchman at Newton turned over to you to keep.

Since there are no charges against Bobby and the pistol was in his car, I presume that you intend to give it back to Bobby. If this is not true and you have any reason for holding it please advise me.

It is possible that I will come to Newton tomorrow and I will see you about this at such time.

2. Warrant purporting to be signed by T. A. Riley as N. P. and ex-Officio J. P., reading as follows:

State Warrant.
Georgia, Baker, County.

Personally came George Durham, who on oath says to be the best of his knowledge and belief Bobb Hall did on the 29 day of Jan. in the year, 1943 in the county aforesaid commit the offense of Stealing truck tire of a Firestone make and this deponent makes this affidavit that a warrant may issue for arrest.

GEORGE DURHAM.

Sworn to and subscribed before me, this 29—Jan. 1943.

T. A. RILEY,

N. P. and ex-Officio J. P.

Georgia, Baker County.

To any Sheriff, Deputy Sheriff, Coroner, Constable or Marshal of said County—Greeting:

George Durham makes oath before me that on the 29 day of Jan. in the year of 1943, in the county aforesaid Bobb Hall did commit the offense of stealing truck tire of a Firestone make,

You Are Therefore Commanded, to arrest the body of the party accused and bring the same before me, or some other judicial officer of this State, to be dealt with as the law directs.

You will also levy on a sufficiency of the property of said accused party to pay the cost in the event of final conviction. Herein fail not.

This 19.....

T. A. RILEY,

N. P. & Ex-Officio J. P.

Gentlemen of the jury, when our national government was formed and the Constitution of the United States was adopted, that instrument was adopted by consent of the states. The states themselves ceded to the federal government certain powers, reserving all other powers to the states or to the people, but they did cede certain powers to the United States Government. Our state is no exception. Our state is just one state of all the United States, just like the rest of them, and they all together empowered the national government to say that no state should deprive any citizen of the United States of certain rights and privileges.

In pursuance of that authority contained in the United States Constitution by agreement of the states, the Congress passed a statute that reads this way, that "Whoever under color of law, statute, ordinance, regulation or custom wilfully subjects or causes to be subjected any inhabitant of any state, territory or district to the deprivation of any rights, privileges or immunities secured or protected by the Constitution and laws of the United States or to different punishments, pains or penalties, on account of such inhabitant being an alien or by reason of his color or race, than are prescribed for the punishment of citizens, shall be guilty of a crime." That is the statute under which the second count of this indictment is drawn.

The Constitution says that, among those rights which a state through its officers and agents are not permitted to deny people, is the right not to be deprived of life, liberty or property without due process of law. By that agreement and the adoption of the Constitution, no state can deprive a citizen of the right to be free from illegal arrest and assault by the state through its officers; a citizen cannot be deprived of life, liberty or property without due process of law; cannot be denied the right, if he is charged with a crime of being regularly indicted, tried by a jury, sentenced by a Court; and then, in addition to those, the statute also provides that different punishments or penalties cannot be imposed on one inhabitant that is not common to all citizens, on account of his being an alien, that is not a citizen at all, or on account of his race or color.

Now, in pursuance of that statute the grand-jury has returned this indictment which you will have out with you and it is drawn in three counts, you will observe, numbered Count 1, Count 2 and Count 3. Of course, a count, gentlemen of the jury, in an indictment is just simply the allegation that the defendants committed some certain described crime, each count being separate and distinct from the other counts. In fact, each count might have been drawn in a separate indictment altogether. So, in this indictment there are three counts and the first one has been dismissed and you will not be concerned at all with the first count. You will not find any verdict on it one way or the other. Count 1 you will just ignore because it is not here before you for trial.

Then, Count 2 is drawn under the statute which I have attempted to quote to you in substance and Count 2 charges that the defendant, the sheriff, Sheriff Screws, and the defendant, Frank Jones, acting as officers, deprived Robert Hall of certain rights secured and protected to him and every other citizen of the United States by the Constitution of the United States. It alleges that as such

officers they denied him the right to be secure in his person from illegal assault and battery by officers of the law, and the right not to be deprived of life and liberty without due process of law, that is to say, without indictment by a grand-jury and without trial by a jury and without sentence by the Court in the regular due course of a criminal case under the state law; and that they denied him that right that he had to be tried according to due process of law and that they subjected him to different punishments from other citizens by reason of his race and color.

Now, that last part, gentlemen of the jury, of the statute which deals with different punishments on account of being an alien or non-citizen, or race or color, is a different thing from the first part of the statute which applies to every citizen. Under the Constitution of the United States, those other rights that I mentioned there protected by the Constitution of the United States apply to every citizen of the United States and no state, not only the State of Georgia, but no state in the United States has any right to deprive any citizen of the United States of any of those rights.

It is alleged in that same count that the other defendant, Jim Bob Kelley, aided and abetted these officers in committing the crime alleged and under a statute of the United States, whoever aids or abets another, cooperates with or joins in the commission of a crime, is himself guilty just like the other defendants would be if they committed such a crime.

And it is alleged in that same indictment that these defendants deprived Robert Hall of these rights which I have mentioned by arresting and then striking and beating him and causing his death. That is the second count of the indictment. It is the first count which you will have anything to do with. You will omit count numbered one altogether.

Then, there is another statute known as the conspiracy statute. That statute says that when two or more persons conspire or agree together to commit an offense against the United States and they do some act in pursuance of that agreement, that that itself is a crime.

First, I will say the third count in this indictment charges that these defendants did conspire and agree together to deprive Robert Hall under color of law of these rights which I have mentioned to you, as set out in the second count; and that in pursuance of that understanding or agreement they committed certain acts set out in that third count.

I might illustrate, if I can, the difference between a conspiracy indictment and what is known as a substantive offense. If a statute denounces a certain act as criminal and a man is indicted for doing that prohibited thing, that is known as a substantive offense. If two or more persons agree to violate that statute or commit that crime and they do anything in pursuance of that agreement, then they are guilty of a conspiracy, whether they ever commit the crime or not. That could be illustrated by reference to something which has nothing whatever to do with this case: Suppose, for example, that under a statute which makes criminal the stealing of goods from an interstate shipment, that is to say a shipment of goods that is coming from Florida into Georgia—there is a statute that says it is a crime to steal goods from such an interstate shipment. Well, let's suppose that an interstate shipment was coming into Albany from Jacksonville of goods on a freight train. Then, let's suppose that two men here in Albany hired a truck and went down to the train in the railroad yards and broke the seal on the car and took the goods out, loaded them on a truck and carried them away. Then, they would be guilty of violating that statute and that would be a substantive offense.

Now, let's suppose that when such a shipment comes into Albany on a train that two men agree up town here that they will get a truck and go down and take goods out of that interstate shipment and, in pursuance of that agreement, they go down here on the street and hire a truck but nothing else happens. They do not do anything else. They do not steal any goods; they do not even go down to the train at all. And yet they are guilty of conspiracy because they agreed that they would commit a crime and did an act in pursuance of that agreement, and they would be guilty of conspiracy, even though they did not commit the offense at all, the substantive offense.

Now that third count, the conspiracy count, after alleging that they did agree or have an understanding among themselves that they would commit this offense which is set out in the second count of the indictment, alleges that they committed certain acts which are denominated overt acts. You will find them set out in the indictment, if you read it. There are six of them and one of them is that the defendants, Jones and Kelley, drove to the home of Robert Hall. Now, these overt acts need not necessarily be criminal acts themselves, if they were done in pursuance of an illegal agreement. The second overt act is that Jones and Kelley arrested Robert Hall and handcuffed him. The third act is that Jones and Kelley drove Robert Hall to the Courthouse yard in an automobile. The fourth act is that they beat him in the Court-house yard, and the fifth is that they dragged Robert Hall unconscious from the well through the Courthouse to the jail; and the sixth, that Jones entered the jail and removed the handcuffs from Robert Hall.

Now, on that conspiracy indictment, gentlemen of the jury, you will observe there are two elements necessary to constitute the offense of conspiracy: One is that there must be an agreement or understanding among the defendants that they are going to commit this criminal act.

Now, that does not mean that it is necessary to show that the defendants got together around a table or anywhere else and made a formal agreement, either written or oral, or otherwise. It does mean that they must have a common understanding, that each one understands that they are going out to do a certain act, and that would be sufficient so far as the agreement or conspiracy feature of it is concerned. Of course, on that count if you find there was no such agreement, then you would not pursue that count any further because if there was no understanding of that sort, then there could be no verdict of guilty, because it takes both the understanding, the agreement, and some overt act. On the other hand, if you think that the defendants did have such a common understanding among themselves, then you would take the next step under that count and look to the alleged overt acts in the indictment.

Now, it would not be necessary, if you found that an agreement such as I have described did exist, for you to find from the evidence that all six of these overt acts were committed. It is necessary for the government in that count to show the commission of at least one of those overt acts. It is not necessary to prove, in order to convict, that every defendant participated in the commission of any overt act but it is necessary to show that some one—at least some one, might be more—but at least some one of the defendants committed some one of the overt acts. Well, under that conspiracy count, which is the third count in this indictment, you will look to the evidence and see whether those two things have been proved by the government.

Now, the defendants plead not guilty to both of these counts, count 2 and count 3. Then, at the trial the burden is on the government to produce evidence sufficient to convince the jury beyond a reasonable doubt that the defendants are guilty as charged in the indictment on either one or both of those two counts.

In the beginning of the trial the defendants are presumed to be innocent and that presumption continues until and unless it is overcome by the testimony introduced in the case, that is to say, testimony sufficient to overcome the presumption and to convince the jury beyond a reasonable doubt that the defendants are guilty.

Now, gentlemen of the jury, the case has consumed quite some time and everybody else connected with it has performed his duty and the responsibility of this case now rests with you and me. Our functions are entirely separate and distinct. I am under an oath and so are you to perform those duties which are assigned to us respectively. It is my duty to tell you what principles of law govern this case, what the law is that governs this case, and it is my duty to explain to you, if I can, precisely what questions you are to decide and from what you are to decide them. Your duty under your oath is to take the evidence on the questions which you are to decide and find a verdict which represents your honest opinion of what the evidence shows. Those duties are imposed upon us as a part of a tribunal constituted for the purpose of administering justice. You and I have no discretion. I have no discretion whatever in telling you what the law is in this case. If I believed the law to be one thing and I deliberately and consciously tell you that it is something else, then I would violate my oath. I am not going to do that.

If you make a verdict in this case from any cause, for any reason whatever outside of the evidence itself and what you honestly believe that evidence shows, you likewise would violate your oaths. It has been said that a jury can do whatever it pleases but that depends upon what kind of jury you have. An honest jury cannot be arbitrary. An honest jury can do only one thing; there is no discretion. A jury is not in the box to convict, not in the box to acquit. The jury is in the box to give judg-

ment on what actually the truth about it is and the verdict of either guilty or not guilty results incidentally from that honest judgment.

Now, gentlemen of the jury, in the trial of a long case a great many things almost unavoidably happen that ought not to be considered by a jury. It makes it sometimes right difficult for an honest jury to do its duty, when a great many matters are discussed in argument which in legal contemplation ought not to have any influence whatever with the jury. I say it makes it very difficult for an honest jury to make up an honest judgment on the evidence itself and nothing else. That has happened in this case, just as it does in a great many other cases. I will refer to just a few of them and I might preface that by saying this, that if you honestly believe that the district attorney has failed to prove that these defendants are guilty, but for some reason or other outside of the evidence you should find a verdict nevertheless of guilty, then you would violate your oath, and you would be unworthy to sit on a jury at all, just as I would be if I violated my oath. On the other hand, if you think this evidence, honestly and fairly considered, shows that these defendants are in fact guilty but for any outside reason, any feeling of your own or any other reason outside of your honest opinion of what the evidence shows, you should nevertheless find them not guilty, then you would violate your oath as jurors.

I am saying this, gentlemen of the jury, because I want you, regardless of whether your verdict is guilty or not guilty—I am not even interested in what that will be—I am interested, however, in explaining to you, if I can, the things that you are to decide and the things that you ought to consider in deciding those questions and to prevent you if I can from making a verdict for any other

reason on earth except what you think, the evidence itself shows.

One thing referred to by one of counsel, just to illustrate what I am saying, was a question to the jury about how you fellows feel about "son-of-a-bitch". Well, gentlemen of the jury, the way you feel or what you would do about language of that sort is not a question in this case at all and you should not even consider a statement like that in argument in deciding what the truth about this case is.

It was said in argument also that the State of Georgia should try these men and not the National Government. Well, gentlemen of the jury, that is a law question which counsel really have no right to argue to this jury at all. I did not stop him but I want to tell you that the State of Georgia has power, the only power on earth, to try these defendants; if it cared to, for some offenses but not for this one. This Court has no jurisdiction to try a murder case. These defendants here are not being tried for murder, not at all.

Another thing that was said to this jury was that Robert Hall was a bad man and had a pistol and that the sheriff and officers said they were going to break up carrying pistols by the negroes around. Well, the sheriff should break up, not only illegal carrying of pistols, but break up any other violation of state laws but he is charged here with committing an offense against the United States because he did not follow what the State of Georgia provides that he shall do in enforcing the laws. So, whether Robert Hall was a bad man, it is all right for it to be in evidence, it is all right for it to be in evidence that he had a pistol and had a shotgun, all of that is in evidence, but whether he was a bad man or not and whether he actually violated the laws of the State of Georgia or not is not the question in this case at all. If he violated the laws of the State of Georgia in Baker County, it would be the duty of the Sheriff to proceed as the state law provides for the

prosecution of such offenses, but the state law does not provide that he shall proceed contrary to the Constitution of the United States and without due process of law. That is what he is charged with here.

Another thing was said, gentlemen of the jury, that you should back up the officers. Well, that depends on how you construe that question. All good citizens have a duty to back up all law enforcement officers who proceed according to the law and do no violence to the law themselves; but if it should be true that officers of the law themselves commit criminal offenses, then it is not the duty of good citizens and it is not the duty of a jury to back them up, regardless of whether you think they are guilty or not guilty. That is not true.

The Constitution, in providing for the protection of these rights which I have stated, applies equally to the lowliest citizen of the United States as to the highest. It protects equally the rights of every citizen in the United States and it provides that the state through its officers or the illegal acts of its officers cannot impose punishments and penalties without due process of law, or subject an inhabitant of the state to different punishments or penalties on account of his being an alien or by reason of his color or race, than are prescribed for the punishment of citizens.

So, it is not a question, gentlemen of the jury—and I want to make this clear to you—it is not a question of race prejudice. It is not a question of finding a verdict in a Court of law according to your view or my view of any race question. That is not in the case at all. The constitution and the statute provide how to proceed with the enforcement of state laws and the constitution of the United States prohibits the State of Georgia through any illegal acts of its officers from denying any citizen or imposing any punishment, that would not be imposed on any other citizen, on any inhabitant because of his race or color. So, there is no room under the constitution or

under the statute itself for anybody to work into the trial of a criminal case of this sort a question of race prejudice, that is to say, to the extent that the jury should find a verdict different from what the evidence shows on account of these considerations which I have mentioned. That would not be proper.

Counsel said too that three years, the maximum punishment which could be imposed in this case, was not so important but that your verdict would be tremendously important to the whole country, the United States of America, and that your verdict would be sent all over the United States by wire. Well, would the truth about this case be affected one way or the other whether your verdict was sent all over the United States or whether it was concealed right here in this room? The truth about the thing is actually the only thing that you are to find and you are not to be interested or concerned with what effect it might have on other sections of the country.

Something was said in argument too about if you should find these defendants guilty, you might go home and tell your wives and daughters that they do not have any protection any more. Well, I charge you, gentlemen of the jury, that there is all the protection under state laws that the state laws provide and that when officers of the state follow the state law and enforce it to the limit, there is no conflict with this statute under which this indictment is drawn and they have full authority, as full as they ever had, regardless of what your verdict might be in this case, to enforce legally all of the laws of the State of Georgia.

I charge you, gentlemen of the jury, with reference to the warrant and the docket entries, about which you heard a great deal, that so far as the offense itself is concerned, it is not necessary for the government to show that the warrant was a valid warrant. It is not a necessary element of the offense for the government to show that the

sheriff either did or did not write the warrant, or whether the Justice of the Peace signed it or did not. It is not a necessary element of the offense to show that there was a warrant at all. It is not any necessary element of the offense itself to prove that the sheriff made entries in the Justice of Peace's docket. Those matters are in evidence for whatever you think they are worth in determining whether you think these defendants by their conduct alleged in this indictment did deprive Robert Hall of due process of law, whether they did to him things which the Constitution of the United States says they can't do legally, and that would not depend on whether the sheriff made entries in the docket or whether he wrote the warrant or whether there was any warrant. You may consider all of that evidence in determining whether you think the sheriff is guilty or not but, if you think the case is otherwise made out, then you would be authorized to convict the sheriff, even though you might think that he did not write the warrant and that he did not make any entries in the docket at all.

Now, gentlemen of the jury, I charge you that an officer, like the sheriff or any arresting officer, has certain rights and only certain rights in connection with a prisoner in his custody under arrest. I am going to read you two statements from the Supreme Court, of this state, the Georgia Supreme Court, about what sheriffs can do legally. In this case it says—and this is the Supreme Court of Georgia—"There was no error in charging that an officer cannot suffer himself to be overcome by any opprobrious words or abusive language while he is acting as a minister of the law. He cannot chastise his prisoner for insolence, that is to say, for being uppity. He cannot yield to his passion and take the administration of punishment into his own hands, but can only use such force as is necessary to make the arrest effectual."

In another case, the Court of Appeals this is instead of the Supreme Court, said—this is the Georgia Court of Appeals: "The act of an arresting officer in holding in custody a person whom he has arrested for violation of the law is an act done by virtue of his office. It is the duty of an arresting officer, who has a person under arrest for a violation of law, to refrain from unlawfully assaulting or killing the prisoner."

So, under the holdings of our own appellate Courts, I charge you that legally a sheriff or other officers would have no right to assault and beat or kill a prisoner, no matter what the prisoner said. That is what the Supreme Court of Georgia says, that the sheriff acting as a minister of the law who arrests a man and has him in his custody cannot strike him or beat him or kill him legally, no matter what the prisoner says.

So, if these defendants, without its being necessary to make the arrest effectual or necessary to their own personal protection, beat this man, assaulted him or killed him while he was under arrest, then they would be acting illegally under color of law, as stated by this statute, and would be depriving the prisoner of certain constitutional rights guaranteed to him by the Constitution of the United States and consented to by the State of Georgia.

I charge you, in that connection, that an arresting officer does have the right to use such force as is necessary in order to make the arrest, if he has a legal process under which to make the arrest. A sheriff who has legal process to make an arrest, has a warrant, has a right to make that arrest and he has a right to use such force, but only such force, as is necessary in order to make the arrest and over and above that he has no right to impose any sort of punishment on his prisoner.

I charge you that the sheriff or other officer, if he had a prisoner under legal arrest and it became necessary in order to prevent the prisoner from killing the sheriff or

other officer or doing him serious bodily harm, would have a right to use such force as was necessary to prevent it. That is all the right that arresting officers have in connection with imposing punishment on a prisoner.

Now, gentlemen of the jury, if you think from the evidence here that the government has proved that these defendants are guilty on counts 2 and 3, the form of your verdict would be, "We the jury find the defendants guilty on counts 2 and 3." If you should find them all not guilty on either count, then the form of your verdict would be, "We the jury find the defendants not guilty." That would mean all of them and it would mean not guilty on either offense.

Now, if you should find the defendants guilty on one of these counts and not guilty on the other, then you would say, "We the jury find the defendants guilty on ~~one~~ count, either two or three, whichever it might be, and not guilty on the other count." If you should find some of the defendants guilty and some of them not guilty, you would also make that clear in your verdict.

I will see counsel in the office a minute.

(In Court's Chambers.)

Mr. Hager:

Judge, I do not see but one thing that I would suggest in the charge. I do not believe you gave the officers as much protection as you would a private citizen and they are certainly entitled to that anyway. Now, a fellow that has a gun and he puts me in fear of my life or grave bodily injury, I have got a right to kill him.

The Court:

Well, it would only be true if you thought it was necessary to kill him to save your life.

Mr. Hager:

Yes, sir, that is true, but I think that is in this case here. He had wrested, according to the testimony, the gun away from one of the officers and the gun did go off in the struggle, and they had a right to use whatever force was necessary to wrest the gun from him, and if they thought, reasonably thought, that they were in danger of their lives or grave bodily harm, they would have a right to kill him.

The Court:

Yes, they would have a right to use enough force to prevent it.

Mr. Hager:

Yes, sir.

The Court:

I think the only thing I left out of that was to say if the jury under circumstances which they think existed believed or could reasonably come to that conclusion, that it was necessary to do what they did in order to protect themselves—

Mr. Hager:

Yes, sir, I think that would be all right. The only thing, as I see, that you left out of it was I do not believe you gave as much protection to the officers as if they were just acting as individuals and I think what you have in mind would cover it.

Mr. Hager:

Now, Your Honor, there is one other thing I would like for you to charge and that is that the indictment itself is merely a charge and has no evidentiary value.

The Court:
All right.

(Returning to Court-Room.)

Gentlemen of the jury, I state to you now that the charges, the allegations, made in this indictment, which you will have out with you, are not themselves evidence. They simply constitute what the government alleges to be the truth about the matter but they are not evidence of the fact. I charge you also that the plea of not guilty entered on this indictment by the defendants is not evidence. It is the contention of the defendants which in effect says that what the indictment charges is not true. That makes an issue for the jury to try and you are to find out the truth about it from the evidence, oral and documentary evidence, which has been introduced in the trial, but you will not consider the indictment or the plea of not guilty as proving anything at all.

I said to you, gentlemen of the jury, that if an officer has a prisoner under arrest and it becomes necessary, in order to prevent the killing of the officer by the prisoner or the inflicting of serious bodily harm upon him, that the officer would have a right to use such force as would be necessary to prevent the injury or the killing to himself, but only that much force and no more. I charge you in that connection that in this case you will determine from the evidence what the situation was around the well during that occurrence that you have heard about, what things have been proved, in your opinion. Get what the exact situation actually was and if from that situation as you find it to be, you think that the officers could reasonably conclude under those circumstances that it was necessary to do what they did do to prevent injury or death to themselves, then they would have a right to

do it but they would have the right only to do what they thought under the circumstances was absolutely necessary in order to prevent injury or death to themselves.

After argument of counsel for both Government and defendants and after charge of the Court, the jury retired and after deliberating upon the issues, returned a verdict against the defendants on counts II and III of the indictment. Said verdict was returned on the 7th day of October 1943.

Immediately thereafter and on October 7, 1943 (the same day the verdict was returned) the Court imposed sentence upon defendants by sentencing each of them to serve one year on count II of the indictment and to pay a fine of \$1000.00 and sentenced each defendant to serve two years on count III of the indictment to run consecutively with the sentence imposed on the second count, making a total term of imprisonment of three years for each defendant and a fine of \$1000.00 as to each.

Wherefore, appellants pray that this their bill of exceptions be certified and approved as correct and that the same be transmitted to the United States Circuit Court of Appeals for the Fifth Judicial Circuit, as provided by law.

This the 4th day of November, 1943.

CLINT W. HAGER,

J. F. KEMP,

ROBT. B. SHORT,

Attorneys for Appellants.

To the Honorable T. Hoyt Davis, United States Attorney
for the Middle District of Georgia:

You are hereby notified that pursuant to the rules governing appeals in criminal cases in the United States

Courts, that M. Claud Screws, Frank Edward Jones, and Jim Bob Kelley (appellants herein) have this day filed in the office of the Clerk of the District Court of the United States for the Middle District of Georgia, Albany Division, their bill of exceptions and assignments of error therein.

This the 4th day of November, 1943.

CLINT W. HAGER,

J. F. KEMP,

ROBT. B. SHORT,

Attorneys for Appellants.

226 ACKNOWLEDGMENT OF SERVICE.

Service of the bill of exceptions in the above entitled case is hereby acknowledged. Copy received.

This the 4th day of November, 1943.

T. HOYT DAVIS,

United States Attorney.

ORDER APPROVING BILL OF EXCEPTIONS.

The above and foregoing bill of exceptions is hereby approved and certified as correct.

I do further certify that said bill of exceptions contains all of the evidence material to the issues adduced upon the trial.

This the 4th day of November, 1943.

BASCOM S. DEEVER,

United States Judge.

Agreed to, this the 4th day of November, 1943.

T. HOYT DAVIS,

United States Attorney.

ASSIGNMENTS OF ERROR.

(Title Omitted.)

Now come the defendants, M. Claud Screws, Frank Edward Jones and Jim Bob Kelley, hereinafter referred to as appellants and within the time required by law and the rules of this Court governing appeals in criminal cases and simultaneously with the filing of their bill of exceptions hereby respectfully make and file this their assignments of error, and for assignment say:

1.

That the Court erred in overruling the demurrers filed to both counts of the indictment upon all the grounds set forth in said demurrers and for all the reasons assigned therein. (R.)

2.

That the Court erred in overruling the motion made by appellants at the conclusion of all the evidence for a directed verdict as to each defendant upon both counts of the indictment, upon each and every ground set forth in said motion and for all the reasons assigned in the various grounds of said motion for directed verdict. (R.)

Wherefore, said appellants have appealed to the Circuit Court of Appeals of the United States for the Fifth Judicial Circuit and pray that this their assignments of error be considered and sustained, and that the judgment of conviction be reversed by said Court.

Dated: This the 4th day of November, 1943.

CLINT W. HAGER,

J. F. KEMP,

ROBT. B. SHORT,

Attorneys for Appellants.

Filed: November 4, 1943.

DESIGNATION OF RECORD

(Title Omitted.)

To the Clerk of said Court:

We hereby designate the following papers and documents which we request be duly authenticated and sent to the United States Circuit Court of Appeals for the Fifth Judicial Circuit to be considered in the appeal of said defendants, said documents are designated as follows:

1. The indictment.
2. Plea and verdict.
3. Sentence of the Court.
4. Demurrer to the indictment.
5. Order sustaining demurrer to count I and overruling it as to counts II and III.
6. Notice of appeal and grounds thereof.
7. Bill of exceptions together with acknowledgment of service of the same.
8. Order approving bill of exceptions.
9. Cost bonds.
10. Assignments of error.
11. This designation of record.
12. Clerk's certificate.

CLINT W. HAGER,
J. F. KEMP,
ROBT. B. SHORT,

Attorneys for Appellants.

Filed: November 4, 1943.

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CLERK'S CERTIFICATE.

In the District Court of the United States for the Middle
District of Georgia—Albany Division.

M. Claud Screws; Frank Edward Jones; Jim Bob Kelley,
Appellants,

vs.

No. 1300, Criminal.

United States of America, Appellee.

United States, of America,
Middle District of Georgia.

I, GEORGE F. WHITE, Clerk of the District Court of the United States in and for the Middle District of Georgia, do hereby certify that the foregoing and attached 229 pages contain a true, full, complete and correct copy of the original record, assignments of error, and all proceedings had in the matter of M. Claud Screws, Frank, Edward Jones and Jim Bob Kelley, Appellants, vs. United States of America, Appellee, as specified in the designation of contents of record on appeal of counsel herein and as the same remains of record and on file in the Clerk's Office of the said District Court at Albany, Georgia.

In Witness Whereof, I have hereunto set my hand and the official seal of the said District Court at Macon, Georgia, this 12th day of November, 1943.

GEORGE F. WHITE,

(George F. White)

(Seal)

Clerk, United States District
Court, Middle District of
Georgia.

[fol. 217] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of December 15, 1943

No. 10834

M. CLAUD SCREWS, FRANK EDWARD JONES and JIM BOB
KELLEY
versus

UNITED STATES OF AMERICA

On this day this cause was called, and, after argument by J. F. Kemp, Esq., for appellants, and T. Hoyt Davis, Esq., United States Attorney, for appellee, was submitted to the Court.

[fol. 218] OPINION OF THE COURT AND DISSENTING OPINION
OF SIBLEY, CIRCUIT JUDGE—Filed January 14, 1944

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
FIFTH CIRCUIT

No. 10834

M. CLAUD SCREWS, FRANK EDWARD JONES, and JIM BOB
KELLEY, Appellants,

versus

UNITED STATES OF AMERICA, Appellee

Appeal from the District Court of the United States for
the Middle District of Georgia

(January 14, 1944)

Before SIBLEY, HOLMES, and WALLER, Circuit Judges

WALLER, Circuit Judge:

Appellants were indicted, tried, and convicted, for an alleged violation of Sec. 20 of the Criminal Code, being

Sec. 52, of Title 18, U. S. C., and for a conspiracy to violate said Sec. 52 of Title 18. It was alleged that the Appellant Screws, while Sheriff of Baker County, Georgia, [fol. 219] and Appellant Jones, while acting as a policeman of the City of Newton, in Baker County, Georgia, both aided and abetted by Appellant Kelley, did under color of the law of Georgia arrest or cause one Robert Hall, a negro citizen of the United States and of the State of Georgia, to be arrested, and brought into the Court House yard of Baker County, where said Robert Hall was beaten over the head with a blackjack by Defendants, from which the death of the said Robert Hall resulted. The substantive offense, alleged in Count 2, was that the Appellants were acting under color of the law of the State of Georgia and deprived the said Robert Hall of rights, privileges, and immunities secured or protected by the Constitution and laws of the United States; among other things the right to be secure in his person and to be immune from illegal assault and battery; the right and privilege not to be deprived of life and liberty without due process of law; the right and privilege not to be deprived of the equal protection of the law; the right to be tried, upon the charge upon which he was arrested, by due process of law; and the right and privilege not to be subjected to different punishments, by reason of his race and color, than are prescribed for the punishment of other citizens.

Appellants challenged by demurrer the jurisdiction of the Court below, asserting that in the killing of Hall and the doing of the other acts charged in the indictment they did not violate Section 52 of Title 18 because the rights, privileges, and immunities enumerated in the indictment are "fundamental or natural rights" which do not have their origin in the Constitution and laws of the United States; that these natural and inalienable rights find their source in the sovereignty of the States, whose duty it is to secure and protect these rights, and that the beating and killing of Hall deprived him of rights afforded by [fol. 220] the State rather than by the Constitution and laws of the United States; secondly, it was asserted, that the 14th Amendment to the Constitution was a prohibition against deprivation by the State of the life, liberty, or property of any person without due process of law; or against the deprivation by the State of the equal protection

of the law to any person within its jurisdiction, and that the prohibition of the 14th Amendment were not applicable to the individual or personal acts of a citizen; and, thirdly, that Section 52 could not be applied to situations where a sheriff or other State officer was acting contrary to and against the positive prohibition of State law.

The third count in the indictment charged a conspiracy to commit the offense charged in the second count.

Does Sec. 52, Title 18, U. S. C., confer jurisdiction upon the Federal Court to try a Sheriff, a policeman, and another (who aided and abetted the two officers), for unlawfully beating to death one under arrest and in custody of such officers, on the theory that such beating and consequent death was done under color of State law and was a willful deprivation of rights, privileges, and immunities secured or protected to the deceased by the Constitution and laws of the United States?

The pertinent part of the 14th Amendment to the Constitution provides: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Section 5 of the 14th Amendment provides that: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article", pursuant to which, and in order to implement [fol. 221] the 14th Amendment, Congress enacted what has now come to be Sec. 52 of Title 18, U. S. C., which is as follows:

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000, or imprisoned not more than one year, or both."

Sec. 88, Title 18, U. S. C., provides in substantial part that if "two or more persons conspire . . . to commit

any offense against the United States, . . . and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000, or imprisoned not more than two years, or both".

The lower Court properly overruled the demurrer to the second and third counts of the indictment upon which the Defendants were tried and convicted.

The right to the enjoyment of life and liberty is a fundamental or natural right, and is not derived from nor created by the Federal Constitution.¹ Nevertheless, the 14th Amendment was designed to safeguard and protect the individual against the deprivation without due process of law of those rights by the State rather than to create new rights in the individual. Sec. 52 of Title 18 does not merely undertake [fol. 222] to protect rights which are derived from the Federal Constitution but it undertakes to protect and make secure any rights secured or protected by the Federal Constitution and laws, and to that end makes criminal the wrongful deprivation of any rights that are secured or *protected* by the Constitution or laws of the United States. Clearly the right to be secure in one's person and to be immune from illegal arrest and battery, or the right not to be deprived of life or liberty without due process of law, and the right to enjoy the equal protection of the laws, are rights "secured or protected" by the Constitution of the United States, and this ground of the demurrer was not tenable.

The second ground of the demurrer, to the effect that the 14th Amendment was a prohibition against the deprivation by the State of the constitutional rights covered thereby, and that the prohibitions of the 14th Amendment are not applicable to individual or personal acts of the citizen, has as its base a fundamentally correct concept.² However, Sec. 52 of Title 18, and the indictment drawn thereunder, are not intended to cover personal and individual acts of a citizen in wrongfully depriving another citizen of constitutional rights.³ The section would

¹ United States vs. Cruickshank, 92 U. S. 553.

² United States vs. Classic, 313 U. S. 299; Virginia vs. Rives, 100 U. S. 313; Hodges vs. United States, 203 U. S. 1.

³ C. B. & Q. R. R. vs. City of Chicago, 166 U. S. 226; Huntington vs. City of New York, 118 Fed. 683.

have no applicability to a citizen who acts without any color of law, statute, ordinance, regulation, or custom of the State, or not in the name or by the authority of the State. The Act can only be applicable to one who acts under guise of authority of the State and thus brings about the illegal deprivation of constitutional rights. The statute was not designed to reach and cannot be stretched to reach the personal, individual act of one citizen toward another when same is not done under color of State law, [fol. 223] even though the depriving actor were the holder of public office.

In the present case the Sheriff contended both before and during the trial that he was acting pursuant to a warrant issued commanding him to arrest and take into custody Robert Hall for the alleged theft of a tire. A warrant can issue and be served only under color, or authority, of law. A void warrant, in the hands of the Sheriff or his deputy, is color of authority, and acts done in the execution of such a warrant are done under color of law. The deprivation of the constitutional rights of one citizen by another is not a violation of Section 52 and becomes a violation only when the depriving citizen is acting under color of law, as distinguished from acting within the law.¹ A sheriff who, acting under a valid warrant in making a necessary and lawful arrest and who in self-defense slays the person he seeks to arrest, has not violated the section, but if a sheriff were acting only under a pretext or color of law and in so doing unlawfully caused the death of another, such sheriff would be amenable to the section in question. The deprivation of liberty or property or life under valid State law constitutes no offense under the Act, but it is a deprivation of a constitutional right under a mere pretense or color of law by one pretending to act under the authority of the State that calls the section into operation. In the instant case there is evidence to the effect that the alleged warrant of arrest was prepared by the Sheriff and was a spurious

¹ "Color of law" does not mean actual law. "Color" as a modifier, in legal parlance, means "appearance as distinguished from reality". Color of law means "mere semblance of legal right". McCann vs. Des Moines, 174 U. S. 168 (text 175).

afterthought. Be that as it may, he insisted that he was acting under color of authority in making the arrest. Assuming that the Sheriff was possessed of a valid warrant, although there was evidence in the case to the contrary, [fol. 224] the beating of a prisoner to death is not necessarily an incident to the making of a lawful arrest. The wrongful beating of a prisoner by an arresting officer acting under a warrant, whether void or valid, is an unlawful deprivation of a right of a citizen of the United States which the 14th Amendment protects, and which Sec. 52 makes a criminal offense, the constitutionality of which section is not raised.

The jury has found, under the overwhelming weight of the testimony, that the beating of the said Robert Hall to his death by the Defendants was without justification and not in necessary self-defense and not in the exercise of such force as was reasonably necessary to make a lawful arrest or to repel an assault.

The third contention of Appellants is that the section in question does not embrace the personal, unofficial, and individual acts of one who holds an office unless those acts were perpetrated under the guise or authority of State law. It may be conceded that if the Sheriff gets into an altercation in a matter that is strictly personal, and which has no connection with his official functions or duties and which arises out of no claim or effort or color of the exercise of lawful authority, the statute would not apply. Certainly the State is not to be held responsible for the unofficial and wholly personal acts of an individual who merely happens to be Sheriff. If John Smith, who happens to be Sheriff, is the owner of a house which he rents to Bill Johnson, and he and Bill Johnson get into a fight over the failure of Johnson to pay rent to Smith, and in the fight Johnson is subjected to the loss of his life, such act would not call the Federal statute into operation. It is essential that the act of deprivation not only be unlawful, but that it be committed under color or pretense of law.

[fol. 225] The 14th Amendment renders State statutes unconstitutional which deny equal protection of the law, due process of the law, etc., but Sec. 52 makes punishable acts done by one under color or pretense of law which result in the deprivation of rights protected by the Federal Constitution.

The motion for directed verdict was based upon substantially the same grounds as were the demurrers, viz, the jurisdiction of the Court. We are of the opinion that the Court below had jurisdiction, that the evidence overwhelmingly supports the verdict of the jury, and that the judgment of the lower Court should be affirmed.

Affirmed.

SIBNEY, Circuit Judge, Dissenting:

Horror at what happened in this case has, I think, interfered with a calm consideration of the law involved. Certainly, if the evidence for the prosecution is credited, the appellants ought to be in the penitentiary. The question is, ought they to be in a penitentiary of the United States?

Death resulted from the beating of a prisoner on the head with a club. The prisoner's loaded shotgun was at hand, and one officer had a pistol. No one attempted to shoot the prisoner. When he appeared to be in a bad condition he was taken at once by the sheriff into another county to a hospital. I do not think it was a wilful murder, but rather that it was involuntary manslaughter in the commission of an unlawful act. The indictment does not charge an intentional killing, and no such issue was submitted to the jury.

[fol. 226] What does the indictment charge? Count 2 is the key count, being merely repeated in Count 3 as a conspiracy. In it there is an elaborate list of rights and immunities alleged to be secured and protected by the Fourteenth Amendment of the Constitution, but these are allegations of law. It is alleged that the defendants acted under color of the law of Georgia and the City of Newton, but no special act of the Legislature or ordinance of the town is mentioned. The fact allegations are these: Serews, being State Sheriff, and Jones, being a city police officer, wilfully deprived Hall of his rights under the Fourteenth Amendment, "that is to say, the defendants arrested and caused to be arrested said Hall . . . and then and there unlawfully and wrongfully did assault, strike and beat said Hall about the head with human fists and a blackjack, causing injuries which were the proximate and immediate cause of his death". The arrest is not alleged to be un-

lawful, but only the beating. Do these facts make a crime against the United States? The affirmative answer is sought in Section 20 of the Criminal Code, the applicable words being: "Whoever under color of any law, statute, ordinance, regulation or custom, wilfully subjects any inhabitant of any State, Territory or District to the deprivation of any rights, privileges and immunities secured or protected by the Constitution and laws of the United States . . . shall be fined . . . or imprisoned . . . or both."

Who is protected? Any inhabitant of any part of the United States territory.

Who is punishable? Whoever acts under color of any law or custom. The statute does not mention State laws, or State customs, or State officers, but applies equally to federal or territorial laws and customs and officers; and indeed to all persons acting by virtue of any supposed [fol. 227] law or custom, whether valid or invalid. The statute does not mention the Fourteenth Amendment and does not profess to be "appropriate legislation" to enforce it. It takes hold of every person in the United States and makes him a potential criminal if he acts under color of any law or custom.

What does it forbid? Wilful deprivation of any right secured or protected by the Constitution and laws of the United States. Wilful, I take it, means intentional, not by accident or misfortune. Does it mean that a particular clause of the Constitution was in mind, with a definite intention to violate it? In this case, there is no reason to suppose that Screws and Jones once thought of the Fourteenth Amendment, or that they knew much or anything about it. The jury were not instructed to make any such enquiry. The accused intentionally beat Hall, and the jury were told that was enough, if not justified.

Now it is a common form of legislation to say that a violation of any provision of a particular Act shall be a crime. The citizen has everything before his eyes and can readily know what he may not do. Far more serious would it be to attempt to make criminal "every deprivation of rights secured" even by one elaborate Act, say the Interstate Commerce Act, or the National Labor Relations Act. If this statute had confined itself to punishing State officers for helping a State to deprive any person of life,

liberty or property without due process of law, contrary to the Fourteenth Amendment, which is the function here assigned to it, it seems to me it would have been too vague to make a good criminal statute, for not even the judges on the bench know just what that portion of the Fourteenth Amendment means, and ideas about it have changed very greatly since Section 20 was first enacted. What it does is to gather up every provision of the federal Constitution [fol. 228] and every provision of every federal statute which may secure or protect any sort of personal, civil, property or political right, and declare it to be a crime to deprive anyone of his right. Who can enumerate what rights are secured by the Bill of Rights of the Federal Constitution? Or by the prohibitions against State action in the original Constitution, or the Thirteenth, Fourteenth and other Amendments? Or in such laws of the United States as the Interstate Commerce Act, the National Labor Relations Law, the Railway Labor Act, Federal Employers Liability Act, War Risk Insurance Act, Harbor Workers Act, Seamen's Acts, Fair Labor Standards Act, and fifty others? It seems to me that such wholesale criminal legislation is not constitutionally possible, because there is in it no ascertainable standard of guilt, and the right to be precisely informed of the things to be charged as crimes is not practically preserved. *United States vs. L. Cohen Grocery Co.*, 255 U. S. 81.

The statutory words, taken in their full sweep, would involve startling consequences. Judges and prosecuting officers, State and federal, tread on dangerous ground. An intentional refusal to send for witnesses, to furnish counsel, to grant a prompt trial, or a full indictment, may make them criminals. Many Federal Boards have made many "regulations", some of which no doubt are contrary to rights secured by the federal laws. Those who act under color of such regulations are liable to prosecution. Every State Sheriff or United States Marshal who uses force on a prisoner, every prison warden who disciplines, is liable to have to answer a federal indictment, as to whether his act was lawful, or only under color of law. A warden censors a prisoner's mail; does he deny his rights under the postal laws? A law of Georgia permits a landowner to impound trespassing cattle till damages are paid. If under color of this law one impounds cattle

[fol. 229] and then kills and eats them unlawfully, he is of course a criminal under State law, but as he has, under color of a law, taken property without due process of law he also must suffer federal imprisonment. In this very case Jones and Screws had, a few days before, apparently without due process, taken Hall's pistol. They might have been federally indicted for that. When Hall was arrested his shotgun was taken from his home, not in a search of his person, but apparently without lawful warrant. This was federally indictable. Policemen everywhere arrest without warrant unlawfully. They are all guilty of wilfully depriving the prisoner of liberty without due process of law, and indictable under this statute, taken at its face value.

But it is said the present is a clear case of deprivation of rights, and a serious one because life was taken, even if not wilfully taken. Who is to decide whether the right is a clear one, or how serious the deprivation must be? The judge and jury? Thus construed, the statute falls squarely under the decision in the *Cohen Grocery* case, *supra*.

The only reasonable construction of the statute which it seems to me could be upheld is that where one, knowing a law or regulation or custom is contrary to a right secured by the federal Constitution or laws, wilfully undertakes to enforce the law or regulation or custom, he shall be punished. There is here no law or regulation or custom to beat a prisoner, white or black. It is lawful to subdue one, if he resists or attacks the arresting officer. That law is not contrary to any right federally secured. It is also a custom in Georgia to strike one who calls you to your face a "son of a bitch", but as the district judge charged the jury in this case the privilege of resenting such words does not extend to an arresting officer. There [fol. 230] is not shown here by allegation or evidence or judicial notice any law, regulation or custom under color of which Screws and Jones struck Hall unless, as they claimed, to subdue him, which would not have deprived him of any right. If they simply struck him unlawfully, as alleged, they are liable on their official bonds, they are liable in damages for assault and battery, and they are liable to criminal prosecution under Georgia law, and because of

the fatal consequence, the prosecution may be for involuntary manslaughter or perhaps murder. I do not think Section 20, if sustainable at all, can be applied to the case.

[fol. 231]

JUDGMENT

Extract from the Minutes of January 14, 1944

No. 10834

M. CLAUD SCREWS, FRANK EDWARD JONES and JIM BOB
KELLEY

versus

UNITED STATES OF AMERICA

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Middle District of Georgia, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

"Sibley, Circuit Judge, dissents."

[fols. 232-234½] PETITION FOR REHEARING--Filed February 2, 1944

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT

M. CLAUD SCREWS,
FRANK EDWARD JONES, and
JIM BOB KELLEY,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

No. 10834

CRIMINAL CASE

MOTION FOR REHEARING

Now come the appellants named above in the caption, and within the time provided by law, and before the remittitur from this court has been sent down, and move the court for a rehearing upon the following grounds, to wit:

GROUND 1.

Because the court has overlooked or ignored sound and controlling principles of law as announced in the decision of the Supreme Court of the United States in the case of:

Joseph E. Snowden v. Edward J. Hughes, et al
which was decided January 17, 1944, same being No. 57, October Term, 1943, which decision holds that,

"A construction of the equal protection clause which would find a violation of a federal right in every departure by state officers from state law is not to be favored."

And which further holds that,

"Mere violation of a state statute does not infringe the federal Constitution."

And wherein (in concurring opinion) Mr. Justice Frankfurter said:

"It is not to be resolved by abstract considerations such as the fact that every official who purports to wield power conferred by a state is **pro tanto** the state. Otherwise every illegal discrimination by a policeman on the beat would be state action for purpose of suit in a federal court."

GROUND 2.

Because the court has overlooked or ignored sound principles of law in holding that the act of a state arresting officer, contrary to state law, amounts to state action.

GROUND 3.

Because the court has overlooked or ignored sound principles of law in holding that a District Court of the United States has original jurisdiction to try a state arresting officer who takes the life of his prisoner, in a way and manner which is contrary to state law.

GROUND 4.

Because the court has overlooked or ignored sound principles of law in holding that a state officer acts under "color of law" merely because he is acting by virtue of his office, even though he is not authorized by law to commit said act and even though he acts contrary to law.

GROUND 5.

Because the court has overlooked or ignored sound principles of law in holding that, "The wrongful beating of a prisoner by an arresting officer acting under a warrant, whether void or valid, is an unlawful deprivation of a right of a citizen of the United States which the 14th Amendment protects, and which Sec. 52 makes a criminal offense."

GROUND 6.

Because the court has overlooked or ignored sound principles of law in holding that where a state arresting officer unlawfully strikes his prisoner, that he commits an offense under Sec. 52 of Title 18, U. S. C.

IN CONCLUSION, we respectfully submit that the court erred in its opinion and decision and that a rehearing should be granted.

Respectfully submitted,

CLINT W. HAGER
J. F. KEMP
ROBERT B. SHORT,

Attorneys for Appellants.

GEORGIA, FULTON COUNTY.

We, Clint W. Hager and J. F. Kemp, do certify that we are of counsel for the appellants named in the within and foregoing motion and do hereby certify that we have read the within and foregoing motion for a rehearing and believe that the court has overlooked certain well established principles of law which, if considered, would require a different decision from that rendered by the court and we further certify that this motion is made in good faith and not for the purpose of delay.

This the 31 day of January, 1944.

CLINT W. HAGER

J. F. KEMP

[fol. 235] OPINION ON REHEARING—Filed February 18, 1944

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
FIFTH CIRCUIT

No. 10834

M. CLAUD SCREWS, FRANK EDWARD JONES and JIM BOB
KELLEY, Appellants,

versus

UNITED STATES OF AMERICA, Appellee

Appeal from the District Court of the United States for
the Middle District of Georgia

On Petition for Rehearing

(February 18, 1944)

Before Sibley, Holmes, and Waller, Circuit Judges

By the Court: The petition for rehearing in the above
styled cause is hereby denied.

Sibley, Circuit Judge, favors a rehearing.

[fol. 236] WALLER, Circuit Judge, specially concurring:

It is my view that Section 52 of Title 18, U. S. C., is
an anti-discrimination statute, under which it must be
alleged and shown that the deprivation of federal right
was on account of the alienage, race or color of the de-
privee, but the contrary was held in *United States v.*
Classic, 313 U. S. 299, which holding I, unapprovingly,
must follow. In the present state of the law, as con-
strued by the Supreme Court, the petition for rehearing
is properly denied. The recent decision in *Snowden v.*
Hughes, decided Jan. 17, 1944, by that court, is not in
conflict with the views expressed by this court in the for-
mer opinion in this case.

[fol. 237]

ORDER DENYING REHEARING

Extract from the Minutes of February 18, 1944

No. 10834

M. CLAUD SCREWS, FRANK EDWARD JONES and JIM BOB
KELLEY

versus

UNITED STATES OF AMERICA

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

"Sibley, Circuit Judge, favors a rehearing."

"Waller, Circuit Judge, specially concurs."

[fol. 238] MOTION AND ORDER STAYING MANDATE—Filed
February 23, 1944

IN THE UNITED STATES, CIRCUIT COURT OF APPEALS FOR THE
FIFTH CIRCUIT

No. 10834

M. CLAUD SCREWS, FRANK EDWARD JONES, and JIM
BOB KELLEY, Appellants,

vs.

UNITED STATES OF AMERICA, Appellee.

Now come M. Claud Screws, Frank Edward Jones and Jim Bob Kelley, appellants in the above entitled case and by and through their attorneys at law, Clint W. Hager, J. F. Kemp and Robert B. Short, show to this Honorable Court the following facts:

1

That appellants were indicted by a Grand Jury of the United States, impaneled and sworn in the Middle District of Georgia at the October Term A. D. 1942, of said court.

That appellants were put on trial in the Albany Division of the Middle District of Georgia, on the 4th day of October 1943, and on October 7, 1943 the appellants were found guilty by the jury which tried them.

That appellants prosecuted their appeal to this Honorable Court and on the 14th day of January 1944, this court affirmed the judgment of the District Court for the Middle District of Georgia.

That within the time provided by law appellants filed their motion for a rehearing and on the 18th day of February 1944 this Honorable Court entered an order denying [fol. 239] said petition for a rehearing.

Appellants now desire to file a petition to the Supreme Court of the United States for certiorari to review the judgment of this court and of the court below, for the purpose of having the Supreme Court pass upon the questions of law raised by appellants upon the hearing of the court below and in this court.

That the mandate of this Honorable Court in the above entitled cause, will be sent down to the District Court of the United States for the Middle District of Georgia on the 28th day of February, 1944, unless the same be stayed by order of this court.

That appellants desire that said mandate be stayed for a period of thirty days from the rendition of the order entered by the court denying the petition for a rehearing, to-wit, from February 18, 1944, in order that they may prepare their application for a writ of certiorari to the Supreme Court of the United States, and to have their said application filed and served within the time provided by statute.

Wherefore, appellants pray that this Honorable Court by proper order, stay the mandate in said case for a period of thirty days from February 18, 1944, as provided by law, in order that appellants may prepare, perfect, file and serve their petition for writ of certiorari to the Supreme Court of the United States.

Clint W. Hager, J. F. Kemp, Robt. B. Short, Attorneys for Appellants.

[fol. 240] I hereby certify that I am one of the attorneys of record for movants in the foregoing motion and that it is the intention of appellants to file a petition to the Supreme Court of the United States for a writ of certiorari.

I further certify that in good faith I believe that there are meritorious and substantial questions of law that should be presented in said petition for certiorari and that said petition for certiorari is to be brought in good faith and not for the purpose of delay.

J. F. Kemp, Attorney for Movants.

[fol. 241] UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE FIFTH CIRCUIT

No. 10834

M. CLAUD SCREWS, FRANK EDWARD JONES, and JIM
BOB KELLEY, Appellants,

versus

UNITED STATES OF AMERICA, Appellee

On consideration of the application of the Appellants in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable Appellants to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, It Is Ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days, from February 18, 1944; the stay to continue in force until the final disposition of the case by the Supreme Court provided that within thirty days from February 18, 1944 there shall be filed with the clerk of this court the certificate of the

clerk of the Supreme Court that certiorari petition and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from February 18, 1944, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 23rd day of February, 1944.

(Signed) E. R. Holmes, United States Circuit Judge.

[fol. 242] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 243] SUPREME COURT OF THE UNITED STATES

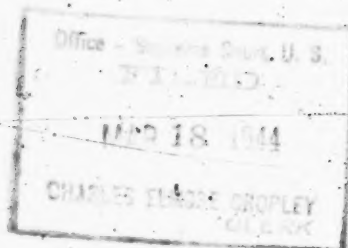
ORDER ALLOWING CERTIORARI—Filed April 24, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(3294)

FILE COPY



No. _____

42

In the Supreme Court of the United States

OCTOBER TERM, 1943

**M. CLAUDE SCREWS, FRANK EDWARD JONES and
JIM BOB KELLEY, PETITIONERS**

vs.

UNITED STATES OF AMERICA

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. _____

**M. CLAUDE SCREWS, FRANK EDWARD JONES and
JIM BOB KELLEY, PETITIONERS**

vs.

UNITED STATES OF AMERICA

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

M. Claud Screws, Frank Edward Jones and Jim Bob Kelley pray that a writ of certiorari be issued to review the judgment of the Circuit Court of Appeals for the Fifth Circuit, entered in the above entitled cause January 14, 1944 (order denying motion for rehearing entered February 18, 1944) affirming the orders and judgments of the District Court of the United States for the Middle District of Georgia which overruled petitioners' demurrers to two counts of the indictment and which overruled petitioners' motion for a directed verdict.

ORDERS AND JUDGMENTS BELOW

The order and judgment of the court overruling petitioners' demurrers to two counts of the indictment appears in the record at p. 24 and the order and judgment overruling petitioners' motion for a directed verdict appears in the record at pp. 166, 194. The

opinion of the Circuit Court of Appeals appears in the record at p. 217.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered January 14, 1944 (R. 227) and the order denying a rehearing was entered February 18, 1944 (R. 232). The jurisdiction of this Court is invoked under Sec. 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the District Court of the United States had jurisdiction to try state arresting officer and his deputies for the offense of killing a person (who was in their custody) in violation of state laws and state regulations and without the sanction of the state or of any subdivision thereof.

STATUTE INVOLVED

The key statute involved is Sec. 52 of Title 18 U. S. C.; Criminal Code, Sec. 20; Revised Statute 5510; 35 Stat. 1092, and will be found in the Appendix, *infra*, p. 11.

STATEMENT

Petitioners were indicted at the October Term 1942 by a United States Grand Jury at Macon, Georgia (R. 2), on three counts. The first count charged a violation of Sec. 51 of Title 18 U. S. C.; the second count charged a violation of Sec. 52 of said title, and the third count charged a conspiracy to violate Sec. 52. The allegations of count 2 were substantially: That petitioners (who were state arresting officers) deprived a Negro citizen and an inhabitant of the State of

Georgia and of the United States of certain rights and privileges granted and secured to him by the 14th Amendment to the Constitution of the United States for that petitioners arrested said Negro and brought him to a place near the court house at Newton, Georgia, where petitioners unlawfully and wrongfully struck and beat said Negro in such a manner as to cause his death. Count 3 alleged a conspiracy to violate Sec. 52.

Petitioners filed their demurrers to the indictment (R. 15) on the primary grounds that the matters and things set forth and charged in the several counts did not constitute offenses against the laws of the United States and that the United States District Court did not have jurisdiction to try petitioners for the alleged offenses. The court sustained the demurrers to count 1 and overruled the demurrers to counts 2 and 3 (R. 24), upon which petitioners were tried and convicted.

The pertinent facts, as disclosed by the evidence, are substantially as follows:

That early in the evening on which Hall (the victim) was killed, Sheriff Screws received a warrant for his arrest; that the warrant was not immediately served as the Sheriff was busy on other matters; that just before midnight Jones and Kelley went to the office of the Sheriff who asked them to use his automobile in serving the warrant on Hall; that pursuant to said request Jones and Kelley arrested Hall and brought him to Newton, Georgia, where they found the Sheriff standing near the court house square; that when the automobile stopped the Sheriff opened the door thereof and told Hall to get out; that Hall stepped out of the automobile with a shot gun in his hand and began to use threats and opprobrious words while resisting arrest; that the Sheriff (being in fear of his life and

safety) began to hit Hall with his fist and told Jones to hit him with his blackjack; that after Hall was subdued he was locked in jail by Jones and Kelley; that shortly thereafter the Sheriff inquired as to the physical condition of Hall and that upon learning that his condition was critical, he (the Sheriff), called for an ambulance and medical assistance; that Hall died soon after reaching the hospital; that there was "bad blood" and ill feeling between Sheriff Screws and the deceased; that a pistol which had previously been taken away from Hall by Jones while he was acting as policeman of the City of Newton, Georgia, was turned over to Sheriff Screws, who refused to return it to Hall without an order of court (R. 68); that Hall appeared before the Grand Jury of Baker County and sought to obtain the pistol from the Sheriff (R. 41); that when Hall failed to get any relief from the Grand Jury (as it had no authority in the matter) he caused a letter to be written to the Sheriff by a lawyer seeking to regain possession of the pistol (R. 194); that on the day Sheriff Screws received the letter he and the other petitioners became intoxicated and were intoxicated at the time Hall was arrested and killed.

No evidence was introduced that petitioners or either of them acted under color of any particular law or under any statute, ordinance, regulation or custom of the State of Georgia or of any subdivision thereof in taking the life of Hall. It was stipulated that Screws was Sheriff of Baker County and that Jones was a policeman of the City of Newton. No race discrimination was proved. The Government contended that the taking of the life of Hall (even though contrary to State law and even though unauthorized by the State or any subdivision thereof) was *pro tanto* the act of the State.

At the conclusion of all the evidence petitioners (defendants in trial court) moved for a directed verdict upon grounds substantially the same as those raised by their demurrers, to-wit, that the court did not have jurisdiction to try petitioners for the offenses charged and as proved. This motion was overruled (R. 166, 194). Petitioners were sentenced to pay a fine of \$1,000.00 each and to serve three years in prison (R. 11, 12, 14).

Upon appeal by petitioners to the Circuit Court of Appeals for the Fifth Circuit the judgment of the court below was affirmed (R. 227). Sibley, Circuit Judge, dissented (R. 223). The court in deciding that the court below had jurisdiction, held, in effect, that even though the officers did not act under any particular statute of the State or of the City of Newton, that they were acting "under color of law" merely because they were acting by virtue of their offices: that the act of a state officer is *pro tanto* the act of the State.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the District Court of the United States had jurisdiction under Sec. 52 of Title 18 U. S. C. to try state arresting officers for the offense of killing a prisoner contrary to state laws and without the sanction of the State or of any subdivision thereof.

2. In holding that the United States District Court had jurisdiction to try state arresting officers under Sec. 88 of Title 18 U. S. C. for a conspiracy to arrest and kill a citizen contrary to state laws and without authority or sanction of any law of the State or of any subdivision thereof.

3. In holding that the violation of a state law by a state arresting officer was a violation of a federal right.

4. In holding that the act of a state officer contrary to state law and without authority of state law or of the law of any subdivision thereof, was *pro tanto* state action.

5. In holding that the 14th Amendment to the Constitution of the United States secures the fundamental rights of life and liberty against the acts of State officers, even though such acts be contrary to State law, and without the sanction of any law or custom.

6. In holding that the wrongful and illegal beating of a prisoner by a state arresting officer, acting under a warrant, whether void or valid, is an unlawful deprivation of a right of a citizen of the United States which the 14th Amendment protects and which Sec. 52 makes a criminal offense.

7. In not reversing the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

The question in this case is the extent of the jurisdiction of the United States District Court to try a state officer for the offense of assaulting a state prisoner, contrary to state law, and without the sanction of any law or custom.

The question of an officer acting under a particular statute, law, ordinance, regulation or custom is not involved.

The question of an officer acting under "color of law" is not involved unless it can be said that the act of a state officer is *pro tanto* the act of the state.

The exact question involved has not been decided by this Court, and it is one of gravity and importance

to every state arresting officer in the United States.

Since there is a special division of the Department of Justice of the United States commonly known as the Civil Rights Division whose personnel is militant in seeking to expand the law by the prosecution of state officers for assaulting state prisoners, contrary to state law, this Honorable Court should settle the jurisdiction of federal courts to try such cases.

Sec. 52 (of Title 18 U. S. C.) is an ancient statute, yet it has never been construed by this Court when applied to a similar state of facts as presented by the record herein.

While this Court has not decided the exact question involved, manifestly the decision of the Circuit Court of Appeals is in conflict with numerous decisions of this Court on analogous questions.

This Court said in a fairly early case:

"The rights of life and personal liberty are natural rights of man. 'To secure these rights,' says the Declaration of Independence, 'governments are instituted among men, deriving their just powers from the consent of the government.' The very highest duty of the States, when they entered into the Union under the Constitution, was to protect all persons within their boundaries in the enjoyment of these 'unalienable rights with which they were endowed by their Creator.' Sovereignty, for this purpose, rests alone with the States. It is no more the duty or within the power of the United States to punish for a conspiracy to falsely imprison or murder within a State, than it would be to punish for false imprisonment or murder itself."

U. S. Cruikshank, 92 U. S. 553.

In a slightly later case this Court held:

"But when a subordinate officer of the State, in violation of State law, undertakes to deprive an accused party of a right which the statute law accords to him, as in the case at bar, it can hardly be said that he is denied, or cannot enforce, 'in the judicial tribunals of the State' the rights which belong to him. In such a case it ought to be presumed the court will redress the wrong. If the accused is deprived of the right, the final and practical denial will be in the judicial tribunal which tries the case, after the trial has commenced."

Virginia v. Rives, 100 U. S. 321.

In a much more recent case this Court held:

"The Fourteenth and Fifteenth Amendments operate solely on state action and not on individual action. Unless the Thirteenth Amendment vests jurisdiction in the National Government, the remedy for wrongs committed by individuals on persons of African descent is through state action and state tribunals, subject to supervision of this court by writ of error in proper cases."

Hodges v. U. S., 203 U. S. 1.

In a case very much in point this Court held:

"Where the jurisdiction of the Circuit Court is invoked on the ground of deprivation of property without due process of law in violation of the Fourteenth Amendment, it must appear at the outset that the alleged deprivation was by act of the State.

"And where it appeared on the face of plaintiff's own statement of his case that the act complained of was not only unauthorized but was forbidden by the state legislation in question, the circuit court rightly declined to proceed further and dismissed the suit."

Barney v. State of New York, 193 U. S. 430.

This Court has also held:

"Under 641, 642, Rev. Stat., there is no right of removal into the Circuit Court of the trial of a person indicted under the state law where the alleged discrimination against the accused in respect to his equal rights, is due merely to illegal or corrupt acts of administrative officers unauthorized by the constitution or laws of the State as interpreted by its highest court. The remedy for wrongs of that character is in the state court, and ultimately in this court by writ of error to protect any right secured or granted to the accused by the Constitution or laws of the United States and which has been denied to him in the highest court of the State in which the decision in respect to that right can be had."

Kentucky v. Powers, 201 U. S. 1.

This Court in a very recent case affirmed the decision of the Circuit Court of Appeals for the Seventh Circuit wherein it was held "that the action of the members of the State Board, being contrary to State law, was not State action and was therefore not within the provisions of the 14th Amendment."

Snowden v. Hughes, No. 57, Oct. Term 1943,
decided Jan. 17, 1944.

The officers in the instant case did not deny the victim, Robert Hall, any rights granted or secured to him by the 14th Amendment to the Constitution of the United States unless their acts amounted to State action, for it is clear that this amendment is an inhibition against State action and not against individual action.

Hodges v. U. S., *supra* (203 U. S. 1).

For the foregoing reasons it is respectfully submitted

that the petition for writ of certiorari should be granted.

JAMES F. KEMP,
CLINT W. HAGER,
ROBERT B. SHORT.
Attorneys for Petitioners.

APPENDIX

SECTION 52 of Title 18 U. S. C.; Criminal Code
Sec. 20 provides:

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000, or imprisoned not more than one year, or both. (R. S. 5510; Mar. 4, 1909, c. 321, 20, 35 Stat. 1092.)"

FILE COPY

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FILED

SEP 21 1944

CHARLES ELMORE GORDON

No. 42

IN THE
Supreme Court of the United States
OCTOBER TERM, 1944

M. CLAUDE SCREWS, FRANK EDWARD JONES and
JIM BOB KELLEY, PETITIONERS

vs.

UNITED STATES OF AMERICA

On Writ of Certiorari to the United States Circuit Court
of Appeals for the Fifth Circuit

BRIEF FOR THE PETITIONERS



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**IN THE
Supreme Court of the United States**

OCTOBER TERM, 1944

No. 42

**M. CLAUDE SCREWS, FRANK EDWARD JONES and
JIM BOB KELLEY, PETITIONERS**

vs.

UNITED STATES OF AMERICA

**On Writ of Certiorari to the United States Circuit Court
of Appeals for the Fifth Circuit**

BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The judgment of the United States District Court for the Middle District of Georgia overruling petitioners' demurrers to counts 2 and 3 of the indictment (R. 24) and its judgment overruling petitioners' motion for a directed verdict (R. 166, 194) are not reported. The opinion of the Circuit Court of Appeals (R. 217-227) is reported in 140 F. (2d) 662.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered January 14, 1944 (R. 227) and the order denying a rehearing was entered February 18, 1944 (R. 232). The jurisdiction of this Court is invoked under Sec. 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the District Court of the United States had jurisdiction to try state arresting officer and his deputies for the offense of killing a person (who was in their custody) in violation of state laws and state regulations and without the sanction of the state or a subdivision thereof.

STATUTE INVOLVED

The key statute involved is Sec. 52 of Title 18 U. S. C. Criminal Code, Sec. 20; Revised Statute 5510; 35 Stat. 1092, and will be found in the Appendix, *infra*, p. 19.

STATEMENT

Petitioners were indicted at the October Term 1942 by a United States Grand Jury at Macon, Georgia (R. 2) on three counts: The first count charged a violation of Sec. 51 of Title 18 U. S. C.; the second count charged a violation of Sec. 52 of this title, and the third count charged a conspiracy to violate Sec. 52. The allegations of count 2 were substantially: That petitioners (who were state arresting officers) deprived a Negro citizen and an inhabitant of the State of Georgia and of the United States of certain rights and privileges granted and secured to him by the 14th Amendment to the Consti-

tution of the United States for that petitioners arrested said Negro and brought him to a place near the court house at Newton, Georgia, where petitioners unlawfully and wrongfully struck and beat said Negro in such a manner as to cause his death. Count 3 alleged a conspiracy to violate Sec. 52.

Petitioners filed their demurrers to the indictment (R. 15) on the primary grounds that the matters and things set forth and charged in the several counts did not constitute offenses against the laws of the United States and that the United States District Court did not have jurisdiction to try petitioners for the alleged offenses. The court sustained the demurrers to count 1 and overruled the demurrers to counts 2 and 3 (R. 24), upon which petitioners were tried and convicted.

The pertinent facts, as disclosed by the evidence, are substantially as follows:

That early in the evening on which Hall (the victim) was killed, Sheriff Screws received a warrant for his arrest; that the warrant was not immediately served as the Sheriff was busy on other matters; that just before midnight Jones and Kelley went to the office of the Sheriff who asked them to use his automobile in serving the warrant on Hall; that pursuant to this request Jones and Kelley arrested Hall and brought him to Newton, Georgia, where they found the Sheriff standing near the court house square; that when the automobile was stopped, the Sheriff opened the door thereof and told Hall to get out; that Hall stepped out of the automobile with a shot gun in his hand and began to use threats and opprobrious words while resisting arrest; that the Sheriff

(being in fear of his life and safety) began to hit Hall with his fist and told Jones to hit him with his blackjack; that after Hall was subdued he was locked in jail by Jones and Kelley; that shortly thereafter the Sheriff inquired as to the physical condition of Hall and upon learning that it was critical, called for an ambulance and medical assistance; that Hall died soon after reaching the hospital; that there was "bad blood" and ill feeling between Sheriff Screws and the deceased; that a pistol which had previously been taken away from Hall by Jones while he was acting as policeman of the City of Newton, Georgia, was turned over to Sheriff Screws, who refused to return it to Hall without an order of court (R. 68); that Hall appeared before the Grand Jury of Baker County and sought to obtain the pistol from the Sheriff (R. 41); that when Hall failed to get any relief from the Grand Jury (as it had no authority in the matter) he caused a letter to be written to the Sheriff by a lawyer, seeking to regain possession of the pistol (R. 194); that on the day Sheriff Screws received the letter he and the other petitioners became intoxicated and were intoxicated at the time Hall was arrested and killed.

No evidence was introduced that petitioners or either of them acted under color of any particular law or under any statute, ordinance, regulation or custom of the State of Georgia or a subdivision thereof in taking the life of Hall. It was stipulated that Screws was Sheriff of Baker County and that Jones was a policeman of the City of Newton. No race discrimination was proved. The Government contended that the taking of life of Hall (even though contrary to State law and even though unauthorized by the State or a subdivision thereof) was *pro tanto* the act of the State.

At the conclusion of all the evidence petitioners (defendants in trial court) moved for a directed verdict upon grounds substantially the same as those raised by their demurrers, to-wit, that the court did not have jurisdiction to try petitioners for the offenses charged and as proved. This motion was overruled (R. 166, 194). Petitioners were sentenced to pay a fine of \$1,000.00 each and to serve three years in prison (R. 11, 12, 14).

Upon appeal by petitioners to the Circuit Court of Appeals for the Fifth Circuit the judgment of the Court below was affirmed (R. 227). Sibley, Circuit Judge, dissented (R. 223). The court in deciding that the court below had jurisdiction, held, in effect, that even though the officers did not act under any particular statute of the State or of the City of Newton, that they were acting "under color of law" merely because they were acting by virtue of their offices: that the act of a state officer is *pro tanto* the act of the State.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the District Court of the United States had jurisdiction under Sec. 52 of Title 18 U. S. C. to try state arresting officers for the offense of killing a prisoner contrary to state laws and without the sanction of the State or of any subdivision thereof.

2. In holding that the United States District Court had jurisdiction to try state arresting officers under Sec. 88 of Title 18 U. S. C. for a conspiracy to arrest and kill a citizen contrary to state laws and without authority or sanction of any law of the State or of any subdivision thereof.

3. In holding that the violation of a state law by a state arresting officer was a violation of a federal right.

4. In holding that the act of a state officer contrary to state law and without authority of state law or of the law of any subdivision thereof, was *pro tanto* state action.

5. In holding that the 14th Amendment to the Constitution of the United States secures the fundamental rights of life and liberty against the acts of State officers, even though such acts be contrary to State law, and without the sanction of any law or custom.

6. In holding that the wrongful and illegal beating of a prisoner by a state arresting officer, acting under a warrant, whether void or valid, is an unlawful deprivation of a right of a citizen of the United States which the 14th Amendment protects and which Sec. 52 makes a criminal offense.

7. In not reversing the judgment of the District Court.

ARGUMENT

I.

Manifestly the United States District Court did not have jurisdiction to try petitioners for the offenses charged. Hall was not killed under authority of the State. It is not contended that petitioners acted under authority of any law, statute, ordinance, regulation or custom, but it is contended that they acted under "color of law" for that the act of a state officer is *pro tanto* the act of the State.

Sec. 52 (of Title 18 U. S. C.) is an ancient statute, yet it has never been construed by this Court when applied to

a similar state of facts as presented herein. However, there is no doubt that the decision of the Circuit Court of Appeals is in conflict with numerous decisions of this Court involving analogous questions.

This Court said in a fairly early case:

"The rights of life and personal liberty are natural rights of man. 'To secure these rights,' says the Declaration of Independence, 'governments are instituted among men, deriving their just powers from the consent of the governed.' The very highest duty of the States, when they entered into the Union under the Constitution, was to protect all persons within their boundaries in the enjoyment of these 'unalienable rights with which they were endowed by their Creator.' Sovereignty, for this purpose, rests alone with the States. It is no more the duty or within the power of the United States to punish for a conspiracy to falsely imprison or murder within a State, than it would be to punish for false imprisonment or murder itself."

U. S. Cruikshank, 92 U. S. 553.

In a slightly later case this Court held:

"But when a *subordinate officer* of the State, in violation of State law, undertakes to deprive an accused party of a right which the statute law accords to him, as in the case at bar; it can hardly be said that he is denied, or cannot enforce, 'in the judicial tribunals of the State' the rights which belong to him. In such a case it ought to be presumed the court will redress the wrong. If the accused is deprived of the right, the final and practical denial will be in the judicial tribunal which tries the case, after the trial has commenced." (*Italics ours.*)

Virginia v. Rives, 100 U. S. 321.

In a much more recent case this Court held:

"The Fourteenth and Fifteenth Amendments operate solely on state action and not on individual action. Unless the Thirteenth Amendment vests jurisdiction in the National Government, the remedy for wrongs committed by individuals on persons of African descent is through state action and state tribunals, subject to supervision of this court by writ of error in proper cases."

Hodges v. U. S., 203 U. S. 1.

In a case very much in point this Court held:

"Where the jurisdiction of the Circuit Court is invoked on the ground of deprivation of property without due process of law in violation of the Fourteenth Amendment, it must appear at the outset that the alleged deprivation was by act of the State.

"And where it appeared on the face of plaintiff's own statement of his case that the act complained of was not only *unauthorized* but was *forbidden* by the state legislation in question, the circuit court rightly declined to proceed further and dismissed the suit."
(Italics ours.)

Barney v. City of New York, 193 U. S. 430.

This Court has also held:

"Under 641, 642, Rev. Stat., there is no right of removal into the Circuit Court of the trial of a person indicted under the state law where the alleged discrimination against the accused in respect to his equal rights, is due merely to illegal or corrupt acts of administrative officers *unauthorized* by the constitution or laws of the State as interpreted by its highest court. The remedy for wrongs of that char-

acter is in the state court, and ultimately in this court by writ of error to protect any right secured or granted to the accused by the Constitution or laws of the United States and which has been denied to him in the highest court of the State in which the decision in respect to that right can be had." (*Italics ours.*)

Kentucky v. Powers, 201 U. S. 1.

This Court in a very recent case affirmed the decision of the Circuit Court of Appeals for the Seventh Circuit wherein it was said "that the action of the members of the State Board, being contrary to State law, was not State action and was therefore not within the provisions of the 14th Amendment."

Snowden v. Hughes, No. 57, Oct. Term 1943,
decided Jan. 17, 1944 (64 S. Ct. 397).

The officers in the instant case did not deny the victim, Robert Hall, any rights granted or secured to him by the 14th Amendment to the Constitution of the United States unless their acts amounted to State action, for it is clear that this amendment is an inhibition against State action and not against individual action.

Hodges v. U. S., *supra* (203 U. S. 1).

Another well considered case is

Civil Rights Cases, 109 U. S. 17.

In the case of

Hunnington v. City of New York, 118 F. 683
(2)

a Circuit Court of New York said:

"Trespasses on the property rights of an individual, committed by public officers or agents professedly acting under authority of a state law, but which are not only not authorized by such law, but by a fair construction of it are prohibited, cannot be imputed to the state so as to bring them within the constitutional inhibition to deprive persons of property without due process of law, and on that ground to confer jurisdiction on a federal court to grant relief."

That case was affirmed by this Court, 193 U. S. 441.

An arresting officer is not an executive, legislative or judicial officer. He cannot act for the State unless he be authorized by law. His authority is well defined and when he exceeds this authority his action cannot be said to be sanctioned by the State.

Before further discussing the Federal cases it might be well to comment on the fact that nowhere in the legal encyclopaedias is there any hint that the Federal Government has any such right (as is claimed in this indictment) to take over the administration of state criminal laws.

For instance in 11 C. J. p. 802 it is said:

"This amendment (14th) does not cover new rights nor regulate old ones but only extends the operation of those already existing and furnishes an additional guaranty against encroachment on them by the States; its inhibitions are directed to State action and apply to all the instrumentalities and agencies employed in the administration of State government and not to the action of private individuals."

And it is further stated on same page:

"The privileges and immunities guaranteed by these amendments to the Constitution and which the States are forbidden to deny or abridge are those which depend immediately on the constitution of the United States, which belong to citizens of the United States in that relation and character, and which the Federal courts have jurisdiction to protect, and not such rights as accrue from state citizenship."

The rights protected by the States, as distinct from those protected by the United States, are illustrated in the notes to the citation. The fundamental rights, the enjoyment of life and liberty, the right to acquire and possess property and to pursue happiness and safety belong to the States, but the specific federal rights are comparatively few in number and are specifically enumerated.

In 14 C. J. S., Sec. 3, p. 1161, it is said:

"Under the Fourteenth Amendment the legislation must necessarily be, and can only be, corrective in its character, addressed to counteract and to afford relief against state regulations or proceedings. A similar view has been taken in respect of the Fifteenth Amendment. The Fourteenth Amendment does not empower Congress to legislate on matters within the domain of state legislation, nor to legislate against the wrongs and personal action of citizens within the states, nor to regulate and control the conduct of private citizens. Hence an enactment which exceeds the limits of corrective legislation and inflicts penalties for the violation of rights belonging to citizens of the state as distinguished from citizens of the United States is not authorized by such

amendment, so far as its operation within the states is concerned."

In 11 Am. Jur., p. 556, discussing this statute, it is said:

"The protection afforded is against an invasion only of rights that are secured by the Federal Constitution or statutes and no others; rights and privileges dependent upon state laws are not protected."

Again discussing Federal authorities, there are several decisions upon which the Government relies to support its contentions.

One of the cases is

Ex Parte Virginia, 100 U. S. 339, 369

This case is easily distinguishable from the case at bar for that the privileges denied to the petitioner were granted and secured to him by the Constitution and laws of the United States, to-wit, the right to serve as a grand or petit juror. The act construed in the *Ex Parte Virginia* case was approved March 1, 1875 (18 Stat., part 3, 336). That section is now codified in Sec. 44 of Title 18, U. S. C. A., and the act expressly prohibits "Any officer or other person charged with any duty in the selection or summoning of jurors" from excluding or failing to summon any citizen because of his race, color or previous condition of servitude. Another distinction is that it was regarded as the final judgment of a state court.

Another case is

Hague v. Committee, etc., 101 F. (2d) 774

This decision was affirmed by the Supreme Court, as modified.

Hague v. Committee, 307 U. S. 496

However, this Court did not construe Sec. 52 of Title 18 and the decision does not support the contention of the Government in the instant case. The complainants in the Hague case alleged that the officials of Jersey City had adopted and enforced a deliberate policy of preventing its citizens from communicating their views respecting The National Labor Relations Act. Also, the officers of Jersey City were purporting to act under authority of a city ordinance, though it was later declared void.

The Government contends that the case of

United States v. Classic, 313 U. S. 299

is conclusive on the issues involved in the instant case. This is an erroneous contention. The court expressly stated at page 329 of its opinion:

"We do not discuss the application of Sec. 20 (Sec. 52, 18 U. S. C. A.) to deprivations of the right to equal protection of the laws guaranteed by the Fourteenth Amendment, a point apparently raised and discussed for the first time in the Government's brief in this Court. The point was not specially considered or decided by the court below, and has not been assigned as error by the Government. Since the indictment on its face does not purport to charge a deprivation of equal protection to voters or candidates, we are not called upon to construe the indictment in order to raise a question of statutory validity or construction which we are alone authorized to review upon this appeal."

The Court construed Section 52 as giving protection to rights and privileges secured by the Constitution of the United States but the rights and privileges discussed in the Classic case were those granted and secured by Article I, Section 2 of the Constitution and not those granted or secured by the Fourteenth Amendment.

Mr. Justice Stone is construing this section of the Constitution said (at p. 315) :

"And since the constitutional command is without restriction or limitation the right, unlike those guaranteed by the 14th and 15th Amendments, is secured against the action of individuals, as well as of states."

This Court held that Section 52 was enacted for the purpose of protecting any right or privilege granted or secured by the Constitution or laws of the United States or by any amendments to the Constitution. This section (52) is applicable to redress wrongs committed by individuals where the Constitution puts a limitation on individual acts. The section is applicable to redress wrongs which infringe rights and privileges granted and secured by the Fourteenth Amendment to the Constitution but the Fourteenth Amendment is an inhibition on State action and is not a limitation on individual action.

It is true that the Court (at pages 325-326) said:

"The right of the voters at the primary to have their votes counted is, as we have stated, a right or privilege secured by the Constitution, and to this Sec. 20 also gives protection. The alleged acts of appellees were committed in the course of their performance of duties under the Louisiana statute requiring them to count the ballots, to record the re-

sult of the count, and to certify the results of the election. Misuse of power, possessed by virtue of state law and made possible *only* because the wrongdoer is clothed *with the authority of state law*, is action taken under color of state law." (Italics ours.)

There is a clear distinction between the Classic case and the case at bar. The officers, holding the election in Louisiana, were authorized by law to count the ballots, and to record and certify the results. Necessarily any act in connection with the holding of the election was done "under color of" law, for they were acting under a state statute. They were authorized by law to hold the election. On the other hand, petitioners were not authorized to inflict any punishment on the deceased and the acts charged in the indictment were not committed "under color of" state law and, therefore, the federal court does not have jurisdiction of the offenses charged. The defendants could have committed the same acts regardless of whether they were officers or individuals. They did not act pursuant to law, but acted contrary thereto.

Another case is

Home Tel. & Tel. Co. v. Los Angeles 227 U. S.
278

This case is clearly not in point for that the officers acted pursuant to and under authority of a municipal ordinance of the City of Los Angeles.

The distinction is aptly illustrated by a decision of the Supreme Court of Texas.

"A proceeding indisputably not by way of attempt to comply with an existing law cannot by any stretch

of construction be held to be had under color of law."

Hunt v. Atkinson 12 S. W. (2) 142, 145

Congress does not have the constitutional power to confer jurisdiction on federal courts to punish offenses of the character as alleged and as proved in the instant case.

The Court in the case of

U. S. v. Harris, 106 U. S. 629

held Section 5519 R. S. unconstitutional. This unconstitutional section "was framed to protect from invasion by private persons the equal privileges and immunities under the laws, of all persons and classes of persons." The Supreme Court discussed the Thirteenth, Fourteenth and Fifteenth Amendments and held that Section 5519 was unconstitutional and void because it had no reference to State action but attempted to confer upon the United States control over the administration of laws protecting persons and property in all the States, regardless of color and regardless of the question of unlawful servitude. The Harris case reviews several cases, including the Slaughterhouse cases, 16 Wall, 36, *U. S. v. Cruickshank*, *supra*, and *Virginia v. Rives*, 100 U. S. 313.

Of course, homicide and the destruction of property by state officers contrary to state law, deserve punishment, but the federal courts do not have jurisdiction of such cases.

II.

Count 3 of the indictment is based on a peculiar com-

bination of Sec. 88 of Title 18 U. S. C. (Criminal Code 37), and Sec. 52 of this title.

Section 88 is another ancient act, enacted in 1879. We have searched in vain for any case holding that there can be a conspiracy punishable under this section unless it is a conspiracy to commit an offense against the United States or unless it is a conspiracy to defraud the United States. The gist of the crime is the conspiracy and, contrary to the common law conspiracy, there must be an overt act committed in order to make the statutory conspiracy effective.

There is no Federal common law, and hence the only Federal offense that can be prosecuted by the United States must be statutory, except that the court may protect its own jurisdiction and punish for contempt.

United States v. Hudson, 7 Cranch 32; 3 L. Ed. 259

In

United States v. Eaton, 144 U. S. 677, 36 L. Ed. 591

it was held that there are no common law offenses against the United States and that an offense which may be the subject of criminal procedure is an act committed or omitted in violation of a public law either forbidding or commanding it, hence it was held that one could not be convicted of a mere departmental regulation requiring the keeping of certain records without naming penalties.

This rule that the statute requires the object of the

conspiracy to be an offense against the United States and that such an offense must necessarily be statutory because there is no common law offense against the United States is again laid down in

Gebardi v. United States, 287 U. S. 112, 77 L. Ed. 63, 84 AL R 370, 374.

Summing up, it is our contention that no crime is charged in Count 3. No right or privilege that can be protected directly by criminal action in the Federal Court under the 14th amendment is set up, but the specific offenses charged are assault and battery and other alleged crimes which the State Constitution and laws specifically protect.

To uphold Federal jurisdiction in this case is to establish a precedent under which the complete supervision of the administration of the criminal laws of the state by state officers would be thrust upon the already overburdened federal courts.

We respectfully submit that the contention of the Government is utterly unsound. To contend that the acts of an arresting officer (which are in violation of law) are under "color of law" merely because of his "badge" is too slender a thread to stand the test of sound juridical reason and logic. The law and facts demand a reversal.

Respectfully submitted,

CLINT W. HAGER,
JAMES F. KEMP, AND
ROBERT B. SHORT,

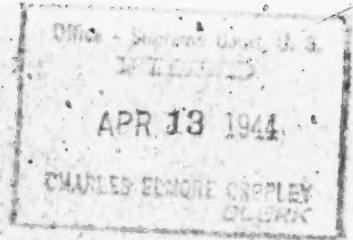
Attorneys for Petitioners

APPENDIX

Section 52 of Title 18 U. S. C., Criminal Code, Sec. 20, provides:

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000, or imprisoned not more than one year, or both. (R. S. 5510; Mar. 4, 1909, c. 321, 20, 35 Stat. 1092.)"

FILE COPY



No. [REDACTED] 42

In the Supreme Court of the United States

OCTOBER TERM, 1943

M. CLAUD SCREWS, FRANK EDWARD JONES, AND JIM
BOB KELLEY, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH
CIRCUIT

MEMORANDUM FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 804

**M. CLAUD SCREWS, FRANK EDWARD JONES, AND JIM
BOB KELLEY, PETITIONERS**

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH
CIRCUIT*

MEMORANDUM FOR THE UNITED STATES

OPINIONS BELOW

The majority (R. 217-223) and dissenting (R. 223-227) opinions in the circuit court of appeals and the specially concurring opinion of Judge Waller (R. 232) on petition for rehearing are not yet reported.

JURISDICTION

The judgment of the circuit court of appeals was entered January 14, 1944 (R. 227), and a petition for rehearing (R. 228-231) was denied February 18, 1944 (R. 232). The petition for a writ of certiorari was filed March 18, 1944. The juris-

diction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

*** CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The Fourteenth Amendment to the Constitution provides in pertinent part:

SECTION 1. * * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * * * *

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Section 20 of the Criminal Code (18 U. S. C. § 52) provides:

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such in-

habitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000, or imprisoned not more than one year, or both.

QUESTION PRESENTED

Petitioners, as state officers, arrested one Hall and beat him to death without justification. The question presented is whether their action constituted an offense under Section 20 of the Criminal Code.

STATEMENT

Petitioners were convicted on October 7, 1943, in the District Court of the United States for the Middle District of Georgia, on counts 2 and 3 of a three-count indictment returned against them in that court on April 10, 1943 (R. 2-9, 10). Count 2 (R. 4-6) charged them with violating Section 20 of the Criminal Code and count 3 (R. 6-9) charged them with conspiring to violate that section, contrary to Section 37 of the Criminal Code (18 U. S. C. 88).¹ Each petitioner was sentenced to a total of three years' imprisonment and to pay a fine of \$1,000 (R. 11-15).

In substance, count 2 (R. 4-6) charged that on January 29 and in the early hours of the morning of January 30, 1943, petitioners—two of whom were state officers (Screws, the sheriff of

¹ Count 1 of the indictment, which charged a violation of Section 19 of the Criminal Code (18 U. S. C. 51), was dismissed by the court upon demurrer (R. 24).

Baker County, Georgia, and Jones, a police officer of Newton, Georgia) and the other an aider and abetter—arrested and caused the arrest of Robert Hall, a Negro citizen of the United States and an inhabitant of the State of Georgia, brought and caused him to be brought to the well in front of the courthouse at Newton, Georgia, and there unlawfully and wrongfully beat him about his head with a blackjack and with their fists, causing his death. It was further alleged that petitioners' action was under color of the laws, statutes, ordinances, regulations, and customs of the State of Georgia, Baker County, and the municipality of Newton, Georgia, and deprived Hall of the following rights, privileges, and immunities secured to him and protected by the Fourteenth Amendment to the Constitution: to be secure in his person and to be immune from illegal assault and battery; to be not deprived of liberty and life without due process of law; to be not denied equal protection of the laws; to be not subjected to different punishments, pains, and penalties by reason of his race or color than are prescribed for the punishment of other citizens; to be tried, upon the charge on which he had been arrested, by due process of law, and, if found guilty, to be sentenced and punished in accordance with the laws of the State of Georgia.

² In *United States v. Classic*, 313 U. S. 299, 329, this Court held that Section 20 of the Criminal Code authorizes the

Count 3 (R. 6-9) charged that the petitioners conspired to commit the offense described in count 2 and that in furtherance of this conspiracy they committed specified overt acts.

The evidence supporting these allegations of the indictment may be briefly summarized as follows:

Petitioner Screws was at the time of the offenses charged sheriff of Baker County, Georgia, and had been such for seven years (R. 36, 168). Petitioner Jones was a policeman in the city of Newton, Georgia (R. 36), and petitioner Kelley was a local resident designated by Screws as a special deputy to assist Jones in arresting Hall (R. 170).

The evidence shows that in December 1942, Jones, apparently without justification, had taken possession of Hall's pistol and had given it to Screws (R. 36-37, 41-42). When Screws refused to return the gun, Hall appealed to the local

punishment of two different offenses: (1) the offense of wilfully subjecting any inhabitant to the deprivation of rights secured by the Constitution, and (2) the offense of wilfully subjecting any inhabitant to different punishments on account of his allegiance, color, or race, than are prescribed for the punishment of citizens. Petitioners do not contend that count 2 charges these two different offenses and is hence duplicitous, and it would seem evident that the allegation that a different punishment was inflicted upon Hall because he was a Negro was intended to be merely a specification in detail of one of the rights guaranteed by the Fourteenth Amendment alleged to have been denied him, i. e., the equal protection of the laws.

grand jury, which called Screws before it on the matter. Screws told the grand jury that he was going to keep the pistol until the Judge ordered him to return it; that "if any of these damned negroes think they can carry pistols, I am going to take them, that they don't carry them to shoot birds with, * * *". The jury^Q concluded that there was no relief they could give Hall. (R. 40-41.) When Screws persisted in his refusal to return the gun, Hall retained counsel who wrote Screws requesting return of the gun. This letter was admittedly received by Screws on January 29, 1943. (R. 43-44, 176, 194-195.)³ Following receipt^{*} of this letter, Screws in the early evening of January 29 entered a local store and stated that he wanted someone to accompany him, "that he was going to go and get the black SB and going to kill him, that he had lived too long then" (R. 46, 50-51). Later that evening at a local bar-room at which Screws and the two other petitioners were drinking (R. 50-57) the barkeeper, because Screws had been drinking, exhorted him not to go through with the proposed arrest that night (R. 52-53).

Shortly after midnight, while Screws waited at the well in front of the Newton courthouse, Kelley and Jones, at Screws' direction, drove in

³ It was on the night of January 29 that Hall was taken into custody by Screws and the other petitioners and beaten to death.

Screws' car to Hall's home (R. 65, 170).⁴ Jones roused Hall from bed, asserting that he had a warrant for his arrest for stealing a tire (R. 59).⁵ While Hall was dressing, Jones recounted that Hall had been before a grand jury in an effort to recover his pistol and had been to see Mr. Culpepper (Hall's counsel) (R. 59-60). Jones, noticing a shotgun behind Hall's bed, took the gun, unloaded it, and told Hall that he would keep it until Hall returned (R. 59, 60, 71). As Hall was taken to the car he was handcuffed and was placed in the rear seat (R. 61, 71, 74, 170), while the shotgun was placed in the front seat between Kelley and Jones (R. 71, 72, 74). When the car arrived at the courthouse square where the well

⁴ Earlier in the evening Kelley had driven to Hall's home and under the pretense of seeking Hall, who was a mechanic, to repair his car, had ascertained that Hall had not yet returned from work (R. 58).

⁵ Petitioners, in their statements to the F. B. I. and through the testimony of Screws, claimed that the violence wrought upon Hall resulted from his resistance to arrest pursuant to a warrant charging him with theft of a tire belonging to one George Durham (R. 65-66, 71-73, 74-75, 171). Screws, however, stated to an agent of the F. B. I. that he did not know who had written the warrant (R. 68) or who had entered it on the docket, that he did not recognize the handwriting appearing on its face, and that he had not written it nor made the docket entry (R. 69). A handwriting expert employed by the F. B. I. testified that the warrant was written at least in substantial part by Screws (R. 125-132, 147-148). Neither George Durham, who petitioners claimed procured the warrant, nor the justice of the peace who was supposed to have issued the warrant, was offered as a witness by the defense.

at which the sheriff waited was located (R. 71). Screws opened the door and ordered Hall to get out (R. 65). When Hall alighted from the car, all three petitioners began beating him with their fists and a blackjack (R. 66, 72, 75, 76, 171). Hall was soon knocked to the ground and thereafter for a period of at least 15 to 30 minutes petitioners continued to beat him (R. 80-82, 83-84, 85-87, 89-94, 98-99, 99-101). Witnesses testified that petitioners were loud and profane (R. 83, 89, 90, 94-95, 97) and were heard to cry frequently, "hit him again, damn him, hit him again" (R. 84, 87, 90, 94). The blows administered to Hall were of such fury they could be heard in nearby houses (R. 86-87, 89, 90). Twenty or thirty minutes after the beating began a shot was fired in the courtyard and thereafter the noise subsided (R. 84, 86, 88-89, 90, 94-95, 98, 100).

After the treatment of Hall above described, Kelley and Jones dragged him feet first from the well through the courthouse yard into the jail (R. 86, 98, 102, 103-104, 105). There they threw him on the floor in a dying condition and still handcuffed (R. 102, 104, 105, 107). According to witnesses then in jail, Jones returned to the jail some 15 or 20 minutes later and removed the handcuffs from the unconscious Hall (R. 103, 105, 107). Jones was heard to say in the jail "we have drag him four miles" (R. 103, 121). Soon thereafter Screws called an ambulance and Hall was

removed to a hospital (R. 171) where he died within an hour (R. 111).^o

After the killing Screws told an F. B. I. agent that he had known Hall all his life and had had trouble with him for two years; that Hall was a "biggety negro, that he considered himself to be a leader among the colored people in the community" (R. 64; see also R. 177). Shortly after Hall had died Kelley, upon being told of his death, stated that "it was just another negro dead" (R. 48). And Jones, according to the testimony of a friend, on the day after the killing asserted that the negro had "acted so damn smart"; had hired an attorney and gone before the court to recover his gun; that "they went out there that night with a warrant and arrested him and handcuffed him and brought him to town and the negro put up some kind of a talk about wanting to give bond * * * and they beat hell out of him * * * (R. 120). When Jones stated that Hall tried to shoot him at the well and the witness inquired how that could happen while

^oThe attending physician testified that he was positive Hall's death was due to blows on the right side of his skull (R. 111). The undertaker testified that Hall was unrecognizable when first brought to him (R. 112), that the skin on his chest and other parts of his body was scraped off, that his right ear was mutilated, and that his head was crushed (R. 113-114). His wrists, according to the testimony of a police officer, had double-marked imprints around them which corresponded with the impressions generally left by handcuffs (R. 116, 117; see also R. 114).

Hall was handcuffed, Jones replied "well we finished him off and that is all" (R. 120-121).

ARGUMENT

Petitioners contend (Pet. 5-10) that since their conduct in beating Hall to death was contrary to state law, it could not be deemed state action and that, since the rights of which Hall was deprived were rights protected by the Fourteenth Amendment which applies only to state action, they therefore committed no offense under Section 20 of the Criminal Code. The purport of petitioners' argument is, apparently, that while their arrest of Hall was state action because it was within the scope of the authority delegated by the state to them as local police officers, their beating Hall to death in the course of the arrest was not state action because, concededly, they acted in excess of their delegated powers.

Petitioners do not argue in this Court, as they did in the court below, that the rights of which Hall was deprived were not rights secured or protected by the Constitution and laws of the United States. As the court below concluded (R. 220), "Clearly the right to be secure in one's person and to be immune from illegal arrest and battery, or the right not to be deprived of life or liberty without due process of law, and the right to enjoy the equal protection of the laws, are rights secured or protected by the Constitution of the United States * * * *"

The opinion of the dissenting judge below (R. 223-226) was in large part based on the view that Section 20 is unconstitutional because "there is in it no ascertainable standard of guilt, and the right to be precisely informed of the things to be charged as crimes is not practically preserved" (R. 225). While there have been no decisions passing di-

Section 20 of the Criminal Code protects "rights, privileges, or immunities secured or protected by the Constitution and laws of the United States" against willful deprivation by individuals acting "under color of any law, statute, ordinance, regulation, or custom." While it protects from deprivation rights secured by provisions in the Constitution other than those contained in the Fourteenth Amendment (cf. *United States v. Classic*, 313 U. S. 299), it was enacted initially to enforce that Amendment.* That Amendment operates, of course, solely upon state and not individual action. *Hodges v. United States*, 203 U. S. 1; *United States v. Harris*, 106 U. S. 629, 640. In so far, therefore, as Section 20 is attempted to be applied to the deprivation of rights

rectly upon the constitutionality of Section 20, this Court long ago upheld the validity of its analogous companion section, Section 19 (18 U. S. C. 51). *Ex parte Yarbrough*, 110 U. S. 651; *United States v. Waddell*, 112 U. S. 76; *Motes v. United States*, 178 U. S. 458, 462; *United States v. Moseley*, 238 U. S. 383, 386. It also recently sustained a conviction under Section 20 without any suggestion of doubt as to its constitutionality. *United States v. Classic*, 313 U. S. 299. Under these circumstances there is certainly no basis for a consideration of the constitutionality of the section under the "plain error doctrine."

Insofar as the dissenting judge additionally held that petitioners' conduct did not come within the purview of the statute (R. 226-227), his reasoning is answered *infra*.

* 89 Cong. Globe, 1536; 91 Cong. Globe 3480, 3658, 3690; 92 Cong. Globe 3807-3808, 3879; Flack, *The Adoption of the Fourteenth Amendment* (1908). See also *Hague v. C. I. O.*, 307 U. S. 496, 510; *United States v. Moseley*, 238 U. S. 383, 387, 388.

protected by the Fourteenth Amendment, it would seem to follow that what is deemed state action under the Amendment must likewise be held to be action under color of law under Section 20. (Cf. *Hague v. C. I. O.*, 307 U. S. 496, 510, 525-526).

The beating of Hall to death was not the act of private individuals. Although unjustified,⁹ it occurred in the course of an arrest by state officers exercising state power in connection with a state function having its roots in antiquity. Regardless of whether the warrant of arrest was a valid one (see *supra*, p. 7, f. n. 5), it is clear

⁹ The jury necessarily found that the beating administered to Hall was without justification, since the court charged the jury as follows (R. 211):

"I said to you, gentlemen of the jury, that if an officer has a prisoner under arrest and it becomes necessary, in order to prevent the killing of the officer by the prisoner or the inflicting of serious bodily harm upon him, that the officer would have a right to use such force as would be necessary to prevent the injury or the killing of himself, but only that much force and no more. [See R. 208-209.] I charge you in that connection that in this case you will determine from the evidence what the situation was around the well during that occurrence that you have heard about, what things have been proved, in your opinion. Get what the exact situation actually was and if from that situation as you find it to be, you think that the officers could reasonably conclude under those circumstances that it was necessary to do what they did do to prevent injury or death to themselves, then they would have a right to do it, but they would have the right only to do what they thought under the circumstances was absolutely necessary in order to prevent injury or death to themselves."

that petitioner Screws, as sheriff,¹⁰ petitioner Jones, as a local police officer, and petitioner Kelley, as a special deputy sheriff,¹¹ acted under color of their official positions in subjecting the person of Hall to their will (see R. 207-208). In fact it was petitioners' contention throughout the trial that in arresting Hall they acted in the lawful exercise of the power vested in them as state functionaries; that they were performing their official duties in executing a warrant (see R. 221). The assumption that their continuous course of conduct may be divided, from the standpoint of state action, into two parts, one, the arrest, constituting state action because, petitioners claim, it was lawful, and the other, the killing, not constituting state action because it was not sanc-

¹⁰ The sheriff is a state officer authorized by state law to execute warrants, 24 Ga. Code Ann. 2801, 2804, 2813, and he is authorized to appoint one or more deputies to assist him in the performance of his duties, 24 Ga. Code Ann. 2811.

¹¹ Although the indictment did not specifically name petitioner Kelley as a local officer but as an aider and abettor (R. 5) and a conspirator (R. 6), we have referred to him as a state officer, since petitioner Screws' testimony at the trial disclosed that he had designated Kelley as his deputy in making the arrest (R. 170). Whether he was properly designated as a deputy is of no materiality in this case, since it is clear from the evidence that he was an aider and abettor and therefore a principal. 18 U. S. C. 550 provides that "whoever directly commits any act constituting an offense defined in any law of the United States or aids, abets, counsels, commands, induces, or procures its commission, is a principal."

tioned by state law, is opposed by numerous decisions of this Court. Long ago this Court in *Ex parte Virginia*, 100 U. S. 339, 347, held, in construing the Fourteenth Amendment, that whoever "by virtue of public position under a State government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name of and for the State, and is clothed with the State's power, his act is that of the State." The very same argument which petitioner now advances was considered at length by this Court in *Home Tel. & Tel. Co. v. Los Angeles*, 227 U. S. 278, and flatly rejected as an "artificial construction" of the Fourteenth Amendment (p. 286), this Court saying (p. 287):

* * * the settled construction of the Amendment is that it presupposes the possibility of an abuse by a state officer or representative of the powers possessed and deals with such a contingency. * * * the theory of the Amendment is that where an officer or other representative of a State in the exercise of the authority with which he is clothed misuses the power possessed to do a wrong forbidden by the Amendment, inquiry concerning whether the State has authorized the wrong is irrelevant and the Federal judicial power is competent to afford redress for the wrong by dealing

with the officer and the result of his exertion of power.¹²

And only three terms ago, in *United States v. Classic*, 313 U. S. 299, where the acts of state election officials were plainly contrary to state law, this Court said, at p. 326, in construing the very section with which we are here concerned, that "misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of' state law", citing *Ex parte Virginia*, *supra*, *Home Tel. & Tel. Co. v. Los Angeles*, *supra*, and *Hague v. C. I. O.*, *supra*.

Petitioners cite, as in conflict with the decision below, the decision of the Circuit Court of Appeals for the Seventh Circuit in *Snowden v.*

¹² See also, to the same effect, *Chicago, Burlington & Quincy R'd v. Chicago*, 166 U. S. 226, 233-234; *Raymond v. Chicago Traction Co.*, 207 U. S. 20, 37; *Iowa-Des Moines Bank v. Bennett*, 284 U. S. 239, 245-246; *Mooney v. Holohan*, 294 U. S. 103; *Missouri ex rel. Gaines v. Canada*, 305 U. S. 337, 342; *Cochran v. Kansas*, 316 U. S. 255; *Pyle v. Kansas*, 317 U. S. 213; Isseks, *Jurisdiction of the Lower Federal Courts to Enjoin Unauthorized Action of State Officials*, 40 Harv. L. Rev. 969.

For cases in the lower federal courts applying Section 20 to analogous factual situations, see *Culp v. United States*, 131 F. (2d) 93 (C. C. A. 8); *Catlette v. United States*, 132 F. (2d) 902 (C. C. A. 4); *United States v. Trierweiler*, 52 F. Supp. 4 (E. D. Ill.); *United States v. Sutherland*, 37 F. Supp. 344 (N. D. Ga.); cf. *Hague v. C. I. O.*, 101 F. (2d) 774, 781, 788, 789, 790 (C. C. A. 3), affirmed, 307 U. S. 496; *United States v. Buntin*, 10 Fed. 730 (C. C. S. D. Ohio); *United States v. Stone*, 188 Fed. 836 (D. Md.).

Hughes, 132 F. (2d) 476, which was affirmed, but on another ground, by this Court on January 17, 1944 (No. 57, present Term). In that case the sole ground of decision by the Circuit Court of Appeals was that action of a state primary canvassing board, which was contrary to state law, was not state action within the meaning of the Fourteenth Amendment. The court predicated its decision on the early decision of this Court in *Barney v. City of New York*, 193 U. S. 430, but recognized "that there is some question as to the current value of the *Barney* case as authority" in the light of subsequent decisions of this Court. It nevertheless thought that the *Barney* decision still stood and was a sound one. In this Court five of the Justices rested their affirmance not upon the ground upon which relief had been denied by the Circuit Court of Appeals, but upon the ground that the petitioner had failed to show that, as he claimed, he had been denied the equal protection of the laws, in violation of the Fourteenth Amendment, there being no allegation of intentional or purposeful discrimination. The five Justices, in an opinion by the Chief Justice, stated, as a reason for not resting their decision upon the ground that the action involved was not state action because contrary to state law, that "the authority of *Barney v. City of New York*, *supra*, on which the court below relied, has been so restricted by our later decisions [citing deci-

sions by this Court to which we have referred],” that our determination may be more properly and more certainly rested on petitioner’s failure to assert a right of a nature such as the Fourteenth Amendment protects against state action.” One Justice concurred in the result without separate opinion. The two dissenting Justices were of the view that the petitioner’s allegations were sufficient to entitle him to an opportunity to establish that he was in fact the victim of discriminatory action. To reach this conclusion it was necessary, of course, for them to hold that the action of the state board was state action even though opposed to state law. One Justice concurred in the result reached by the majority but wrote a separate opinion. He alone expressed agreement with the Circuit Court of Appeals that the *Barney* case was controlling and was sound law. It was his view that the federal courts should not intervene in disputes over alleged discriminatory action by state officers in disobedience of state law until the highest state court had affirmed such action and made it the law of the state. He feared that unless that procedure were followed, “every illegal discrimination by a policeman on the beat would be state action for purpose of suit in a federal court.” There was, of course, not before the Court

¹¹ See particularly the Court’s treatment of the *Barney* decision in the opinion of Chief Justice White in *Home Tel. & Tel. Co. v. Los Angeles*, 227 U. S. 278, 294.

a case such as this, where the discrimination and the denial of constitutional rights resulted in the taking of life by state officials without due process and where, as the evidence indicates, the availability of a state remedy, as a practical matter, was, at least, wholly problematical. (See the testimony of the Baker County Solicitor General at R. 42.) While we cannot deny that a conflict in principle exists between the decision of the Circuit Court of Appeals in this case and that of the Circuit Court of Appeals for the Seventh Circuit in the *Snowden* case, we think that this Court's unwillingness in that case to rest its affirmance upon the doctrine of the *Barney* case, as did the Seventh Circuit, so undermines the authority of the latter court's decision as to justify us in not concurring in the granting of a writ of certiorari to resolve the asserted conflict; and we believe the case was correctly decided below.

Respectfully submitted.

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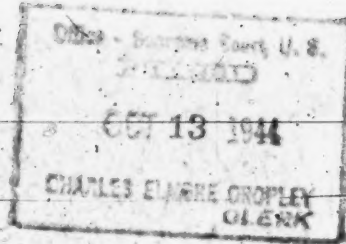
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APRIL 1944.



No. 42

In the Supreme Court of the United States

OCTOBER TERM, 1944

**M. CLAUD SCREWS, FRANK EDWARD JONES, AND
JIM BOB KELLEY, PETITIONERS**

v.

UNITED STATES OF AMERICA

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE FIFTH CIRCUIT**

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 42

**M. CLAUD SCREWS, FRANK EDWARD JONES, AND
JIM BOB KELLEY, PETITIONERS**

v.

UNITED STATES OF AMERICA

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE FIFTH CIRCUIT**

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The majority and dissenting opinions in the Circuit Court of Appeals (R. 217-227) and the concurring opinion of Judge Waller on petition for rehearing (R. 232) are reported in 140 F. (2d) 662.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on January 14, 1944 (R. 227), and a petition for rehearing (R. 228-231) was denied on February 18, 1944 (R. 232). The petition for a

writ of certiorari was filed on March 18, 1944, and was granted on April 24, 1944 (R. 236). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court on May 7, 1934.

**CONSTITUTIONAL AND STATUTORY PROVISIONS
INVOLVED**

The Fourteenth Amendment to the Constitution provides in pertinent part:

Section 1. * * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * * * *

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Section 20 of the Criminal Code (18 U. S. C. 52) provides:

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the

Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000, or imprisoned not more than one year, or both.

QUESTIONS PRESENTED

The petitioners, police officers of the State of Georgia, arrested a Negro on a warrant charging him with theft of a tire, and unjustifiably beat him to death.

(1) Does their action constitute an offense punishable under Section 20 of the Criminal Code?

(2) Is Section 20, as applied here, so vague and indefinite as to be unconstitutional?

STATEMENT

The petitioners—Screws, the sheriff of Baker County, Georgia, a position which he had held for seven years (R. 36, 168); Jones, a policeman in the city of Newton, Georgia (R. 36); and Kelley, a special deputy designated by Screws to assist Jones in making the arrest involved here (R. 170, 177)—were convicted on October 7, 1943, in the District Court of the United States for the Middle District of Georgia, on counts 2 and 3 of a three-count indictment returned against them in that court on April 10, 1943 (R. 2-9, 10). Count 1 of

the indictment (R. 2-4) which charged a violation of Section 19 of the Criminal Code (18 U. S. C. 51), was dismissed by the court upon demurrer (R. 24). Count 2 (R. 4-6) charged the petitioners with violating Section 20 of the Criminal Code (18 U. S. C. 52), and count 3 (R. 6-9) charged them with conspiring to violate Section 20, contrary to Section 37 of the Criminal Code (18 U. S. C. 88). Each petitioner was sentenced to a total of three years' imprisonment and payment of a \$1,000 fine (R. 11-15). Upon appeal to the Circuit Court of Appeals for the Fifth Circuit, their convictions were affirmed (R. 217-223). Judge Sibley dissented (R. 223-227).

The petitioners assigned as error in the court below (R. 214) only the overruling of their demurrer to counts 2 and 3 of the indictment and the denial of their motion, at the conclusion of all the evidence, for a directed verdict. The questions presented, therefore, relate solely to the sufficiency of those counts of the indictment, together with the proof adduced at the trial, to sustain the convictions.

The Indictment.

Count 2 (R. 4-6) charged that on January 29 and 30, 1943, Screws and Jones, aided and abetted by Kelley, arrested Robert Hall, a Negro citizen of the United States and of the State of Georgia, brought him to the well in front of the courthouse at Newton, Georgia, and there unlawfully and

wrongfully beat him about his head with a black-jack and with their fists, thus causing his death. It was further alleged that the petitioners acted under color of the laws, statutes, ordinances, regulations, and customs of the State of Georgia, Baker County, and the municipality of Newton, Georgia, and that they deprived Hall of the following rights, privileges, and immunities secured to him and protected by the Fourteenth Amendment of the federal Constitution: to be secure in his person and to be immune from illegal assault and battery; not to be deprived of liberty and life without due process of law; not to be denied equal protection of the laws; not to be subjected to different punishments, pains, and penalties by reason of his race or color than are prescribed for the punishment of other citizens; to be tried, by due process of law, upon the charge on which he had been arrested, and, if found guilty, to be sentenced and punished in accordance with the laws of the State of Georgia.¹

¹ In *United States v. Classic*, 313 U. S. 299, 327, this Court held that Section 20 of the Criminal Code authorizes the punishment of two distinct offenses: (1) willfully subjecting any inhabitant to the deprivation of rights secured by the Constitution; and (2) willfully subjecting any inhabitant to different punishments on account of his alienage, color, or race, than are prescribed for the punishment of citizens. The petitioners do not contend that count 2 charges these two different offenses and hence is duplicitous. It is evident that the allegation that a different punishment was inflicted upon Hall because he was a Negro was merely

Count 3 (R. 6-9) charged that, in violation of Section 37 of the Criminal Code (18 U. S. C. 88), the petitioners conspired to commit the offense described in count 2, and that in furtherance of this conspiracy they committed specified overt acts.

The Evidence.

The evidence supporting these allegations of the indictment may be summarized as follows:

Hall was a young Negro, about 30 or 31 years old at the time of his death, who lived on a farm near Newton in Baker County, Georgia (R. 35-36, 38). In December 1942, Jones had taken Hall's pistol and given it to Screws (R. 36-37, 41-42). When Screws refused to return the gun, Hall appealed to the local grand jury (R. 40). Screws told the grand jury that he was going to keep the pistol until a judge ordered him to return it, and that if "any of these damn negroes" carried pistols, he would take them away (R. 40-41). The grand jury concluded that there was no relief they could give Hall (R. 40). When Screws persisted in his refusal to return the pis-

a specific enumeration of one of the rights guaranteed by the Fourteenth Amendment alleged to have been denied him, *i. e.* the equal protection of the laws. The case was tried on the theory that only one offense was involved, namely, willful deprivation of rights secured by the Constitution. Consequently, no question is here presented as to the sufficiency of the indictment and the proof to support a conviction of the second offense punishable under Section 20.

tol, Hall retained counsel who wrote Screws requesting return of the gun. This letter was received by Screws on January 29, 1943. (R. 43-44, 176, 194-195.) There was evidence that, following receipt of this letter, Screws in the early evening of January 29 entered the Whites' filling station in Newton, and stated that he wanted someone to accompany him, "that he was going to go and get the black SB and going to kill him, that he had lived too long then" (R. 46). A witness testified: "He walked in and asked me did I have any guts and I told him yes, a little bit and he said well I am going to get Bobby Hall and I told him no I couldn't afford to go * * *" (R. 50). Later that evening at a local barroom at which Screws and the two other petitioners were drinking (R. 50-57), the barkeeper, because Screws had been drinking, exhorted him not to go through with the proposed arrest that night (R. 52-53).

Shortly after midnight, while Screws waited at the well in front of the Newton courthouse, Kelley and Jones, at Screws' direction, drove in Screws' car to Hall's home (R. 65, 170).² Jones roused Hall from bed, asserting that he had a warrant for his arrest charging him with theft of a tire

² Earlier in the evening Kelley had driven to Hall's home and under the pretense of seeking Hall, who was a mechanic, to repair his car, had ascertained that Hall had not yet returned from work (R. 58).

(R. 59). While Hall was dressing, Jones, with his gun drawn (R. 74), recalled that Hall had been before a grand jury in an effort to recover his pistol and had been to see a lawyer (R. 59-60). Jones, noticing a shotgun behind Hall's bed, took the gun, unloaded it, and told Hall that he would keep it until Hall returned (R. 59, 60, 71). Hall was taken to the car, handcuffed, and placed in the rear seat (R. 61, 71, 74, 170); the shotgun was placed in the front seat between Kelley and Jones (R. 71, 72, 74).

When the car arrived at the courthouse square the sheriff was waiting for them at the well in front of the courthouse (R. 71). Screws opened the door and ordered Hall to get out (R. 65). When Hall alighted from the car, all three petitioners began beating him with their fists and a solid-bar blackjack about eight inches long and weighing two pounds (R. 66, 72, 75, 76, 81, 171). Hall was soon knocked to the ground, and there-

³ The validity of the warrant was questioned at the trial by the testimony of a handwriting expert employed by the F. B. I. who stated that the warrant was written at least in substantial part by Screws (R. 125-132, 147-148). Screws stated to an agent of the F. B. I. that he did not know who had written the warrant (R. 68) or who had entered it on the docket, that he did not recognize the handwriting appearing on its face, and that he had not written it or made the docket entry (R. 69). Neither George Durham, who allegedly procured the warrant, nor the justice of the peace who was supposed to have issued the warrant, was called as a witness.

after for a period of at least from 15 to 30 minutes the petitioners continued to pummel him (R. 80-82, 83-84, 85-87, 89-92, 94-95, 98-99, 99-101). Witnesses testified that the petitioners were loud and profane (R. 83, 89, 90, 94-95, 97), and were heard to cry frequently, "hit him again, damn him, hit him again" (R. 84, 87, 90, 94). The blows administered to Hall could be heard in nearby houses (R. 86-87, 89, 90). Twenty or thirty minutes after the beating began a shot was fired in the courtyard, and thereafter the noise subsided (R. 84, 86, 88-89, 90, 94-95, 98, 100).

Kelley and Jones then dragged Hall feet first from the well through the courthouse yard into the jail (R. 86, 102, 103-104, 105). There they threw him on the floor, dying, his hands still in cuffs (R. 102, 104, 105, 107). Jones returned to the jail about 15 or 20 minutes later and removed the handcuffs from the unconscious man (R. 103, 105, 107). Soon thereafter Screws called an ambulance and Hall was removed to a hospital (R. 171), where he died within an hour (R. 111).⁴

After the killing Screws told an F. B. I. agent that he had known Hall all his life and had had

⁴The attending physician testified that Hall's death was due to blows on the right side of his skull (R. 111). The undertaker testified that Hall was unrecognizable when first brought to him (R. 112), that the skin on his chest and other parts of his body was scraped off, that his right ear was mutilated, and that his head was crushed (R. 113-114).

trouble with him for two years; that Hall was a "biggety negro, that he considered himself to be a leader among the colored people in the community" (R. 64; see also R. 177). Shortly after Hall died, Kelley, upon being told of his death, stated that "it was just another negro dead" (R. 48).

The petitioners' defense at the trial was that Hall's death resulted from his violent resistance when he was directed by Serews to get out of the car after it arrived in the courthouse square. Serews testified as follows (R. 171):

I opened the door and I said "All right, Bobby, get out" and I noticed he wasn't in any hurry to get out but when he, when I did see him come out, I saw something coming out ahead of him like that (indicating) and I discovered it was a gun; and he said "You damn white sons—" and that is all I remember what he said. By that time I knocked the gun up like that and the gun fired off right over my head; and when it did he was on the ground by then and me and Kelley and Jones ran into him and we all were scuffling and I was beating him about the face and head with my fist. I knew Jones had a blackjack and I told him to hit him and he hit him a lick or two and he didn't seem to weaken and I said "Hit him again." When he fell to the ground, we didn't hit him on the ground. * * * I would be afraid to say how long it was before he was beaten to where he quit

resisting us or quit trying to assault me because in a time like that you would be a poor judge of time; I think.

The Charge.

The trial court instructed the jury as follows with respect to the lawful powers of arresting officers (R. 207-208, 211-212):

Now, gentlemen of the jury, I charge you that an officer, like the sheriff or any arresting officer, has certain rights and only certain rights in connection with a prisoner in his custody under arrest. I am going to read you two statements from the Supreme Court of this state, the Georgia Supreme Court, about what sheriffs can do legally. In this case it says—and this is the Supreme Court of Georgia—“There was no error in charging that an officer cannot suffer himself to be overcome by any opprobrious words or abusive language while he is acting as a minister of the law. He cannot chastise his prisoner for insolence, that is to say, for being uppity. He cannot yield to his passion and take the administration of punishment into his own hands, but can only use such force as is necessary to make the arrest effectual.”

In another case, the Court of Appeals this is instead of the Supreme Court, said—that is the Georgia Court of Appeals: “The act of an arresting officer in holding in custody a person whom he has arrested for violation of the law is an act done by virtue

of his office. It is the duty of an arresting officer, who has a person under arrest for a violation of law, to refrain from unlawfully assaulting or killing the prisoner."

So, under the holdings of our own appellate Courts, I charge you that legally a sheriff or other officers would have no right to assault and beat or kill a prisoner, no matter what the prisoner said. That is what the Supreme Court of Georgia says, that the sheriff acting as a minister of the law who arrests a man and has him in his custody cannot strike him or beat him or kill him legally, no matter what the prisoner says.

So, if these defendants, without its being necessary to make the arrest effectual or necessary to their own personal protection, beat this man, assaulted him or killed him while he was under arrest, then they would be acting illegally under color of law, as stated by this statute, and would be depriving the prisoner of certain constitutional rights guaranteed to him by the Constitution of the United States and consented to by the State of Georgia.

I charge you, in that connection, that an arresting officer does have the right to use such force as is necessary in order to make the arrest, if he has a legal process under which to make the arrest. A sheriff who has legal process to make an arrest, has a warrant, has a right to make that arrest and he has a right to use such force, but

only such force, as is necessary in order to make the arrest and over and above that he has no right to impose any sort of punishment on his prisoner.

I charge you that the sheriff or other officer, if he had a prisoner under legal arrest and it became necessary in order to prevent the prisoner from killing the sheriff or other officer or doing him serious bodily harm, would have a right to use such force as was necessary to prevent it. That is all the right that arresting officers have in connection with imposing punishment on a prisoner.

* * * * *

I said to you, gentlemen of the jury, that if an officer has a prisoner under arrest and it becomes necessary, in order to prevent the killing of the officer by the prisoner or the inflicting of serious bodily harm upon him, that the officer would have a right to use such force as would be necessary to prevent the injury or the killing to himself, but only that much force and no more. I charge you in that connection that in this case you will determine from the evidence what the situation was around the well during that occurrence that you have heard about, what things have been proved, in your opinion. Get what the exact situation actually was and if from that situation as you find it to be, you think that the officers could reasonably conclude under those circumstances that it was necessary to do what

they did do to prevent injury or death to themselves, then they would have a right to do it but they would have the right only to do what they thought under the circumstances was absolutely necessary in order to prevent injury or death to themselves. [Italics added.]

SUMMARY OF ARGUMENT

Section 20 of the Criminal Code makes it punishable for anyone, acting under color of law, willfully to deprive any person of rights, privileges, or immunities secured or protected by the Constitution and laws of the United States. The offense includes two elements: willful deprivation of rights secured by the Constitution, and action taken under color of law. We believe that the indictment and the supporting proof are sufficient to sustain the petitioners' convictions under Section 20, and that the statute, as applied here, is not so vague and indefinite as to be unconstitutional.

I

The evidence showed that the petitioners willfully deprived Hall of rights secured to him by the Fourteenth Amendment, particularly the right not to be deprived of life without due process of law. Since the Fourteenth Amendment protected Hall against state and not individual action, the Government was required to show not only that the rights of which he was deprived were

secured to him by the Constitution, but also that such deprivation was the act of the State.

There can be little doubt that the rights of which Hall was deprived by the petitioners, acting in the name of and for the State, were secured to him by the Fourteenth Amendment. The jury's verdict establishes that the petitioners' assault upon Hall was neither "necessary to make the arrest effectual or necessary to their own personal protection" (R. 208). If due process of law requires that no man be condemned to death upon evidence procured from him through violence or coercion, it is an *a fortiori* conclusion that a State may not take his life without even affording him a trial. Due process of law forbade, therefore, that Hall be deprived of his life unless he were tried and convicted of a crime punishable by death, and in accordance with procedures complying with the requirements of fundamental fairness and justice.

We believe that, for purposes of determining criminal liability under Section 20, the acts of the petitioners are referable to the State. It may be conceded that the petitioners' conduct, as charged in the indictment and found by the jury, was in violation of state law. It is submitted, nevertheless, that the question whether conduct constitutes state action for purposes of applying the criminal sanctions of Section 20 is not to be determined merely by inquiring whether the State

has authorized the particular acts involved. To speak of state action is, of course, to employ an abstraction. A State itself never acts: it acts, and can act, only through individuals purporting to act on its behalf, legislators, judges, executive and administrative officers. Whether acts of its officers are to be imputed to a State has been made to depend, generally speaking, upon the purpose for which such determination is sought to be made.

While the setting in which it is here presented may be novel, the question itself is not new. The contentions which the petitioners make in this case were unsuccessfully pressed upon this Court as early as 1879, only eleven years after the adoption of the Fourteenth Amendment, in *Ex parte Virginia*, 100 U. S. 339. The Court there held (100 U. S. at 347): "Whoever, by virtue of public position under a State government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State." Here, as in *Ex parte Virginia*, the petitioners were not and did not purport to be acting as private individuals; they did not attempt to show at the trial that they were seeking to satisfy their personal feelings; the trial court was not requested to charge the jury that

the petitioners should be acquitted if their motives in assaulting Hall were of a personal nature. The petitioners contended at the trial that the death of Hall occurred during the performance of their official duties as arresting officers, and that they acted only to meet his forcible resistance to arrest. The petitioners acted in the name of and for the State, and were clothed with the powers of the State—powers which they did not possess and could not exercise as private individuals. They were acting in their capacity as police officers sheltered by the protective authority of the State. Here, no more than in *Ex parte Virginia*, the petitioners cannot avoid the penalties imposed by federal law for the infringement of federal rights by claiming that they were responsible for the manner in which they discharged their duties only to the State whose officers they were and whose law they were bound to enforce.

Ex parte Virginia does not stand alone; it is merely the first in a series of decisions establishing that action by state officers does not lose its character as state action merely because unauthorized by the State. The petitioners' reliance upon *Barney v. City of New York*, 193 U. S. 430, and similar cases, is misplaced. The considerations which may be persuasive in leading towards refusal of federal jurisdiction in civil suits, where the plaintiff has a choice of forums and where the bringing of suit in a state court affords the State

an opportunity to correct or redress the wrong done in its name, are wholly inapplicable to federal criminal proceedings in which the federal Government is seeking to vindicate a federal right which can be asserted only in the federal courts. Unlike civil suits to redress infringements of civil rights, criminal prosecutions under Section 20 can be brought only in federal courts. 28 U. S. C. 371. The federal Government is powerless to initiate any proceedings in the state courts which might enable the highest court of the State to confirm or disavow the acts of subordinate state officials. This is particularly true where the victim has suffered the loss of life, which obviously cannot be restored to him. If, as in this case, officers, acting in the name of and for the State take a man's life without due process of law, no other officers of the State, judicial or otherwise, can ever have the opportunity to correct or undo the wrong done in its name. The denial of his constitutional right not to be deprived of life without due process of law was irrevocably effected when Hall was unjustifiably beaten to death by the petitioners.

Its legislative history supports the construction of Section 20 as applicable to deprivations of constitutional right made by subordinate state officials, acting in the name of and for the State, even though not authorized by it. If the provision were to be limited to the actions expressly authorized

by state law, the statute would have only the most trivial scope—particularly in view of the requirement that deprivations of constitutional right be “willful.” Where an action is based upon an explicit direction of state law, a mistake of law may well negate the element of willfulness. There is no justification in its legislative history for thus reducing the scope of the statute which, in the clearest and most unequivocal language, was designed to confer broad federal protection upon the enjoyment of basic constitutional rights.

There can be no doubt that the petitioners’ actions were taken under color of state law. They acted in their capacity as state law-enforcement officers; they did not purport to be acting as private individuals not endowed with the authority of the State. Since they were acting in the performance of their official duties, it is immaterial that they may have exceeded their authority. “Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken ‘under color of’ state law.” *United States v. Classic*, 313 U. S. 299, 326.

II

Section 20, as applied here, is not so vague and indefinite as to be unconstitutional. This Court has held in *United States v. Classic*, *supra*, at 328-329, that the comprehensive character of the

rights protected by Section 20 does not subject the statute to constitutional infirmities. Moreover, the validity of Section 19 of the Criminal Code (18 U. S. C. 51), which punishes conspiracies to injure a citizen in the exercise "of any right or privilege secured to him by the Constitution or laws of the United States," has repeatedly been upheld. In *United States v. Cohen Grocery Co.*, 255 U. S. 81, 89, principally relied upon by Judge Sibley in his dissenting opinion in the court below, a conviction was held unconstitutional where the statute left open "the widest conceivable inquiry, the scope of which no one can foresee and the result of which no one can foreshadow or adequately guard against" and where "to attempt to enforce the section would be the exact equivalent of an effort to carry out a statute which in terms merely penalized and punished all acts detrimental to the public interest when unjust and unreasonable in the estimation of the court and jury."

The comprehensiveness of Section 20 is of a different order. It was natural that Congress, in seeking to protect all rights secured by the Constitution, should not undertake to catalogue every federally protected right. The possibility that in circumstances not here presented, there may be difficulty in determining whether there has been such a deprivation of constitutional right as to come within the penalties of Section 20 is no

reason for doubting the validity of the statute in cases where its applicability is clear.

ARGUMENT

Since the petitioners complain only that the trial court erred in overruling their demurrer to counts 2 and 3 of the indictment and in denying their motion, at the conclusion of all the evidence, for a directed verdict, the questions before the Court are whether those counts of the indictment and the supporting proof are sufficient to sustain the convictions under Section 20 of the Criminal Code (18 U. S. C. 52),⁵ and, whether the statute, as applied here, is so vague and indefinite as to be unconstitutional.

I

THE INDICTMENT AND THE PROOF WERE SUFFICIENT TO SUSTAIN THE CONVICTIONS

Section 20 of the Criminal Code, which is derived from § 2 of the Civil Rights Act of April 9, 1866, 14 Stat. 27, punishes anyone who, acting under color of law, willfully deprives any person of any rights, privileges, or immunities secured or

⁵ Count 3, the conspiracy count, depends for its validity upon count 2. If the latter count is sustained, it is clear that an agreement among the petitioners to accomplish the offense proscribed by Section 20 is a conspiracy under Section 24 of the Criminal Code. *Culp v. United States*, 131 F. (2d) 93, 99 (C. C. A. 8). The jury's finding in this respect, which is unchallenged by the petitioners, is amply supported by the evidence summarized in the Statement, *supra*, pp. 6-11.

protected by the Constitution and laws of the United States. "The generality of the section, made applicable as it is to deprivations of any constitutional right, does not obscure its meaning or impair its force within the scope of its application, which is restricted by its terms to deprivations which are willfully inflicted by those acting under color of any law, statute and the like." *United States v. Classic*, 313 U. S. 299, 328-329. We submit that both elements of the offense punishable by Section 20, namely, (a) willful deprivation of rights secured by the Constitution, and (b) action taken under color of law, are present in this case.

A. THE PETITIONERS WILLFULLY DEPRIVED HALL OF RIGHTS
SECURED TO HIM BY THE FOURTEENTH AMENDMENT

Count 2 of the indictment alleged, *inter alia*, that the petitioners willfully deprived Hall of the following rights secured to him by the Fourteenth Amendment: not to be deprived of life without due process of law; and to be tried, upon the charge on which he had been arrested, by due process of law, and if found guilty, to be sentenced and punished in accordance with the laws of the State of Georgia (R. 4-6). Since the Fourteenth Amendment protects these rights against state, and not individual, action, *Virginia v. Rives*, 100 U. S. 313, 318; *United States v. Harris*, 106 U. S. 629, 639-640; *Civil Rights Cases*, 109 U. S. 3; *Hodges v. United States*, 203 U. S.

1; *United States v. Powell*, 212 U. S. 564, the Government was required to establish not only that the rights of which Hall was deprived were secured by the Fourteenth Amendment, but also that such deprivation was the act of the State of Georgia.

Assuming for the moment that the acts of the petitioners were the acts of the State—an assumption whose validity we shall presently attempt to demonstrate—there can be little doubt that the rights of which Hall was deprived were secured to him by the Fourteenth Amendment. The Amendment explicitly forbids the taking of life or liberty without due process of law. The breadth of the protection afforded by the due process clause in this class of cases is evidenced by a recent statement of the Court: “The due process clause of the Fourteenth Amendment requires that action by a state through any of its agencies must be consistent with the fundamental principles of liberty and justice which lie at the base of our civil and political institutions, which not infrequently are designated as ‘the law of the land’.” *Buckalter v. New York*, 319 U. S. 427, 429, and cases there cited. Compare Mr. Justice Johnson in *Bank of Columbia v. Okely*, 4 Wheat. 235, 244: “As to the words from Magna Charta * * *, after volumes spoken and written with a view to their exposition, the good sense of mankind has at length settled down to this: that they were intended to secure the individual from

the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice." And see *Strauder v. West Virginia*, 100 U. S. 303, 310: "The Fourteenth Amendment makes no attempt to enumerate the rights it designed to protect. It speaks in general terms, and those are as comprehensive as possible. Its language is prohibitory; but every prohibition implies the existence of rights and immunities, prominent among which is an immunity from inequality of legal protection, either for life, liberty, or property."

The jury's verdict establishes that the petitioners' assault upon Hall was neither "necessary to make the arrest effectual or necessary to their own personal protection" (R. 208). If due process of law commands that no man be condemned to death upon evidence procured from him through violence or coercion, see *Ashcraft v. Tennessee*, 322 U. S. 143, 155, and cases cited, it is an *a fortiori* conclusion that a State may not take his life without even affording him a trial. Cf. *Mooney v. Holohan*, 294 U. S. 103; *Moore v. Dempsey*, 261 U. S. 86. Due process of law clearly forbade, therefore, that Hall be deprived of his life unless he were tried and convicted of a crime punishable by death, and in accordance with procedures complying with the requirements of fundamental fairness and justice. Cf. *Logan v. United States*, 144 U. S. 263, 294.

We are thus brought to the principal question in the case: are the acts of the petitioners to be ascribed to the State of Georgia? Whatever answer may be given for purposes not here relevant, it is submitted that, for purposes of determining responsibility under Section 20, the question is to be answered in the affirmative. We may concede, at the outset, that the petitioners' conduct, as charged in the indictment and found by the jury, was in violation of Georgia law. As the trial court charged the jury (R. 207), it is the law of Georgia (as it is generally, see 1 Anderson on Sheriffs, § 120) that "an officer to keep the peace cannot suffer himself to be overcome by opprobrious words or abusive language while acting as a minister of the law, armed with legal power, and exerting it over a prisoner; he cannot chastise his prisoner for insolence; he cannot yield to his passions, and take the administration of punishment, as it were, into his own hands." *Burns v. Georgia*, 80 Ga. 544, 548; *Moody v. Georgia*, 120 Ga. 868. In addition to forbidding the deprivation of life, liberty, or property without due process of law (Art. I, § 2-103), the Constitution of the State of Georgia expressly provides that no person shall be "abused in being arrested, while under arrest, or in prison" (Art. I, § 2-109). The petitioners' violation of their legal duty as arresting officers might conceivably have been punished criminally under

Georgia law as an assault and battery (see *Burns v. Georgia*, and *Moody v. Georgia, supra*), as manslaughter (see *O'Connor v. Georgia*, 64 Ga. 125), or as murder. If Hall's death were found to have been caused by the petitioners' criminal acts, his widow or children could, under the Georgia wrongful death statute, recover from them the "full value" of his life. Ga. Code Ann., §§ 105-1301 *et seq.* The State requires its sheriff to post bonds in the sum of \$10,000, conditioned upon the faithful performance of their duties (Ga. Code Ann., § 24-2805); and such bond is "for the use and benefit of every person who is injured * * * by any wrongful act committed under color of his office" (Ga. Code Ann., § 89-418; see *Powell v. Fidelity & Deposit Co.*, 45 Ga. App. 88).

We submit, however, that the question whether the petitioners' conduct constituted state action for purposes of applying the penal sanctions of Section 20 is not to be determined merely by inquiring whether the State has authorized the particular acts involved. To speak of state action is, of course, to employ an abstraction. A State itself never acts: it acts, and can act, only through individuals purporting to act on its behalf, legislators, judges, executive and administrative officers. Whether acts of its officers are to be imputed to a State has been made to depend, generally speaking, upon the purpose for which

such determination is sought to be made. Thus, in cases such as *Ex parte Young*, 209 U. S. 123; *Western Union Telegraph Co. v. Andrews*, 216 U. S. 165; and *Looney v. Crane Co.*, 245 U. S. 178, suits to enjoin state officers from enforcing allegedly unconstitutional statutes have been held not to be suits against the State in violation of the Eleventh Amendment, even though the officers' actions were regarded as state action under the Fourteenth Amendment. See *Iowa-Des Moines Bank v. Bennett*, 284 U. S. 239, 246, n. 5.

While the setting in which it is here presented may be novel, the question itself is not new. The contentions which the petitioners make in this case were pressed upon this Court as early as 1879, only eleven years after the adoption of the Fourteenth Amendment, in *Ex parte Virginia*, 100 U. S. 339. That case arose under the Act of March 1, 1875, 18 Stat. 336 (8 U. S. C. 44), which provided that no citizen should be disqualified for service as a juror in any court, federal or state, on account of his race, color, or previous condition of servitude; and punished any officer or other person charged with the selection of jurors who should exclude any citizen for such cause. A judge of the State of Virginia was indicted in a federal district court for violation of the statute, and was taken into custody. Applications to this Court for a writ of habeas corpus were made by him and the State. Since

the law of Virginia authorized no discriminations based upon race, color, or previous condition of servitude, its Attorney General contended at the bar of this Court that "the State had done its duty, and had not authorized or directed that county judge to do what he was charged with having done; that the State had not denied to the colored race the equal protection of the laws; and that consequently the act of Cole [the judge] must be deemed his individual act, in contravention of the will of the State." Harlan, J., dissenting in the *Civil Rights Cases*, 109 U. S. 3, 58. This Court, nevertheless, denied the applications and sustained the validity of the statute as an exercise of Congress's powers under the Fourteenth Amendment (100 U. S. at 346-347):

They [the prohibitions of the Fourteenth Amendment] have reference to actions of the political body denominated a State, by whatever instruments or in whatever modes that action may be taken. A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government, deprives another of property, life, or liberty, without due process of law, or denies or takes

away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning. Then the State has clothed one of its agents with power to annul or to evade it.

Mr. Justice Field's dissenting opinion, concurred in by Mr. Justice Clifford, insisted that: "If Congress could, as an appropriate means to enforce the prohibition [of the due process clause of the Fourteenth Amendment], prescribe criminal prosecutions for its infraction against legislators, judges, and other officers of the States, it would be authorized to frame a vast portion of their laws; for there are few subjects upon which legislation can be had besides life, liberty, and property" (100 U. S. at 366). Only to the dissenting Justices, however, was it clear that "for the manner in which he [the county judge] discharges this duty [of selecting jurors] he is responsible only to the State whose officer he is and whose law he is bound to enforce" (*id.*, at 349).

In the case at bar the petitioners were not and did not purport to be acting as private individuals; they did not attempt to show at the trial that they were seeking to satisfy personal feelings towards Hall; the trial court was not requested to charge the jury that the petitioners should be acquitted if their motives in assaulting

Hall were of a personal nature. As has been noted (*supra*, p. 10), the petitioners contended at the trial that the death of Hall was incidental to performance of their official duties as arresting officers, and that they acted only to meet his forcible resistance to arrest. Here, as in *Ex parte Virginia*, the petitioners acted in the name of and for the State, and were clothed with the powers of the State—powers which they did not possess and could not exercise as private individuals. The State of Georgia has by statute endowed its sheriffs with the power and duty of executing warrants. Ga. Code Ann., §§ 24-2801, 24-2804, 24-2813. And sheriffs are empowered to appoint deputies to assist in the performance of their duties. Ga. Code Ann., § 24-2811. Screws as sheriff, Jones as a local policeman, and Kelley as a special deputy designated to aid Jones in executing the warrant for the arrest of Hall, were acting in their capacity as police officers sheltered by the protective authority of the State. Here, no more than in *Ex parte Virginia*, the petitioners cannot avoid the penalties imposed by federal law for the infringement of federal rights by claiming that they were responsible for the manner in which they discharged their duties only to the State whose officers they were and whose law they were bound to enforce.

Ex parte Virginia does not stand alone; it is merely the first in a long series of decisions estab-

lishing that action by state officers does not lose its character as state action merely because unauthorized by the State. See *Neal v. Delaware*, 103 U. S. 370, 397; *Civil Rights Cases*, 109 U. S. 3, 15-18; *Chicago, Burlington and Quincy R. R. Co. v. Chicago*, 166 U. S. 226, 233-234; *Raymond v. Chicago Traction Co.*, 207 U. S. 20, 35-37; *Ex parte Young*, 209 U. S. 123; *Home Tel. & Tel. Co. v. Los Angeles*, 227 U. S. 278, 288-289; *Cuyahoga Power Co. v. Akron*, 240 U. S. 462; *Fidelity and Deposit Co. v. Tafoya*, 270 U. S. 426, 434; *Hopkins v. Southern California Telephone Co.*, 275 U. S. 393, 398; *Iowa-Des Moines Bank v. Bennett*, 284 U. S. 239, 245-246; *Nixon v. Condon*, 286 U. S. 73, 89; *Mosher v. City of Phoenix*, 287 U. S. 29; *Sterling v. Constantin*, 287 U. S. 378, 393; *Mooney v. Holohan*, 294 U. S. 103; *Missouri ex rel. Gaines v. Canada*, 305 U. S. 337, 342; *Hague v. C. I. O.*, 307 U. S. 496, 512; *Cochran v. Kansas*, 316 U. S. 255; *Pyle v. Kansas*, 317 U. S. 213; *Snowden v. Hughes*, 321 U. S. 1.

In *Home Tel. & Tel. Co. v. Los Angeles*, 227 U. S. 278, suit was brought in a federal district court to enjoin officials of the city of Los Angeles from enforcing a city ordinance fixing telephone rates alleged to be confiscatory and in violation of the Fourteenth Amendment. The defendants asserted that if the rates were confiscatory, they would also violate the due process clause of the state constitution and hence could not be regarded

as state action within the Fourteenth Amendment. Mr. Chief Justice White, speaking for a unanimous Court, rejected this contention in unequivocal language (227 U. S. at 287):

* * * the proposition relied upon presupposes that the terms of the Fourteenth Amendment reach only acts done by State officers which are within the scope of the power conferred by the State. The proposition hence applies to the prohibitions of the Amendment the law of principal and agent governing contracts between individuals and consequently assumes that no act done by an officer of a State is within the reach of the Amendment unless such act can be held to be the act of the State by the application of such law of agency. In other words, the proposition is that the Amendment deals only with the acts of state officers within the strict scope of the public powers possessed by them and does not include an abuse of power by an officer as the result of a wrong done in excess of the power delegated. Here again the settled construction of the Amendment is that it presupposes the possibility of an abuse by a state officer or representative of the powers possessed and deals with such a contingency. It provides, therefore, for a case where one who is in possession of state power uses that power to the doing of the wrongs which the Amendment forbids even although the consummation of the wrong may not be within the powers possessed if

the commission of the wrong itself is rendered possible or is efficiently aided by the state authority lodged in the wrongdoer. That is to say, the theory of the Amendment is that where an officer or other representative of a State in the exercise of the authority with which he is clothed misuses the power possessed to do a wrong forbidden by the Amendment, inquiry concerning whether the State has authorized the wrong is irrelevant and the Federal judicial power is competent to afford redress for the wrong by dealing with the officer and the result of his exertion of power.

The point was regarded as so settled in 1931, when *Iowa-Des Moines Bank v. Bennett*, 284 U. S. 239, was decided, that Mr. Justice Brandeis, also the spokesman for a unanimous Court, was able to state the proposition in axiomatic terms (284 U. S. at 245-246):—

* * * The prohibition of the Fourteenth Amendment, it is true, has reference exclusively to action by the State, as distinguished from action by private individuals. *Virginia v. Rives*, 100 U. S. 313, 318; *United States v. Harris*, 106 U. S. 629, 639. But acts done “by virtue of a public position under a State Government * * * and in the name and for the State,” *Ex parte Virginia*, 100 U. S. 339, 347, are not to be treated as if they were the acts of private individuals, although in doing them the official acted contrary to

an express command of the state law. When a state official, acting under color of state authority, invades, in the course of his duties, a private right secured by the federal Constitution, that right is violated, even if the state officer not only exceeded his authority but disregarded special commands of the state law. * * *

The petitioners contend, nevertheless, that their acts are not referable to the State unless authorized by the legislature or confirmed by the highest court of the State. Their chief reliance is placed upon the concurring opinion of Mr. Justice Frankfurter in *Snowden v. Hughes*, 321 U. S. 1, 13, and *Barney v. City of New York*, 193 U. S. 430. In the *Snowden* case a suit for damages was brought in a federal district court against members of a state election board for refusing to certify the plaintiff as a candidate for the state legislature, thus allegedly denying him the equal protection of the laws. The district court dismissed the suit upon the ground that, since the complaint showed that the state officers had failed to perform duties imposed upon them by state law, their failure to certify the plaintiff was not state action and hence no rights secured to the plaintiff by the Fourteenth Amendment had been infringed. The Circuit Court of Appeals for the Seventh Circuit affirmed on the same ground (132 F. (2d) 476), on the authority of the *Barney* case. The judgment was

affirmed by this Court, however, on the ground that the complaint failed to allege a purposeful discrimination based upon race or color, and hence the right asserted by the plaintiff was not secured by the equal protection clause of the Fourteenth Amendment. 321 U. S. 1. Mr. Justice Rutledge concurred in the result, and Mr. Justice Douglas and Mr. Justice Murphy dissented. In a separate concurring opinion Mr. Justice Frankfurter expressed his agreement with the court below in its holding that *Barney v. City of New York* was controlling. The action of the state board, admittedly in defiance of state law, could not, in the opinion of Mr. Justice Frankfurter, "be deemed the action of the State, certainly not until the highest court of the State confirms such action and thereby makes it the law of the State." 321 U. S. at 17. The majority of the Court found it unnecessary to consider whether the defendants' conduct constituted state action within the meaning of the Fourteenth Amendment. Speaking for the majority, Mr. Chief Justice Stone stated that the authority of the *Barney* case had been "so restricted by our later decisions * * * that our determination may be more properly and more certainly rested on petitioner's failure to assert a right of a nature such as the Fourteenth Amendment protects against state action." 321 U. S. at 13.

In our view the question for decision in the present case may be distinguished from that pre-

sented in *Snowden v. Hughes* and *Barney v. City of New York*. Both of the latter cases involved civil suits brought in the federal courts to redress illegal acts of state officers allegedly in violation of the Fourteenth Amendment. As precisely stated by Mr. Justice Frankfurter in his concurring opinion in the *Snowden* case (321 U. S. at 16), the question in such cases "is not whether a remedy is available for such an illegality, but whether it is available in the first instance, in a federal court." We submit that the considerations which may be persuasive in leading towards refusal of federal jurisdiction in civil suits, where the plaintiff has a choice of forums and where the bringing of suit in a state court affords the State an opportunity to correct or redress the wrong done in its name, are wholly inapplicable to federal criminal proceedings in which the federal Government is seeking to vindicate a federal right which can be asserted only in the federal courts. Unlike civil suits to redress infringements of civil rights, criminal prosecutions under Section 20 can be brought only in the federal courts. 28 U. S. C. 371. The federal Government is powerless to initiate any proceedings in the state courts which might enable the highest court of the State to confirm or disavow the acts of subordinate state officials. This is particularly true where the victim has suffered the loss of life, which cannot, of course, be restored to him. If,

as in this case, officers, acting in the name of and for the State, take a man's life without due process of law, no other officers of the State, executive, legislative, or judicial, can ever have the opportunity to correct or undo the wrong done in its name. The denial of Hall's constitutional right not to be deprived of life without due process of law was irrevocably effected when he was unjustifiably beaten to death by the petitioners. Neither his life nor his constitutional right could be restored by any proceeding instituted under the aegis of the State, whether judicial or otherwise.

Barney v. City of New York, whatever its current vitality, is not controlling here. "The question there decided," as stated by Mr. Justice Brandeis in *Iowa-Des Moines Bank v. Bennett*, 284 U. S. 239, 246, "was that the lower federal court had properly dismissed a bill in equity since it appeared upon its face that the act complained of was forbidden by the state legislation." Suit was brought in a federal circuit court to enjoin New York City, and its transit officials, from proceeding with the construction of a subway, on the ground that such action would deprive the plaintiff of property without due process of law. The asserted deprivation of rights secured by the Fourteenth Amendment was based solely, however, upon the allegation that the state officials failed to comply with the state statute in chang-

ing plans for the construction of the railway without obtaining the approval required by the statute. In earlier proceedings in the state courts it had been held that, although the construction was without legal authority, the plaintiffs should be left to their remedies at law. *Barney v. Board of Rapid Transit Commissioners*, 38 Misc. 549; *Barney v. City of New York*, 39 Misc. 719, affirmed, 83 App. Div. 237. The circuit court dismissed the bill for want of jurisdiction, and this Court affirmed. The opinion of Mr. Chief Justice Fuller is ambiguous, however, with respect to the precise grounds of the decision. His assertion (193 U. S. at 437), as a general proposition, that—

* * * the bill on its face proceeded on the theory that the construction of the easterly tunnel section was not only not authorized, but was forbidden by the legislation, and hence was not action by the State of New York within the intent and meaning of the Fourteenth Amendment, and the Circuit Court was right in dismissing it for want of jurisdiction * * *

is, as has already been observed, inconsistent with later decisions of this Court, particularly *Raymond v. Chicago Traction Co.*, 207 U. S. 20, 37; *Home Tel. & Tel. Co. v. Los Angeles*, 227 U. S. 278, 294; and *Iowa-Des Moines Bank v. Bennett*, 284 U. S. 239, 246. The Chief Justice continued, however, as follows (193 U. S. at 437-438):

Controversies over violations of the laws of New York are controversies to be

dealt with by the courts of the State. Complainant's grievance was that the law of the State had been broken, and not a grievance inflicted by action of the legislative or executive or judicial department of the State; and the principle is that it is for the state courts to remedy acts of state officers done without the authority of or contrary to state law.

This language suggests that the *Barney* case may properly be regarded as but an application of the principle, more fully developed in later decisions, that a federal court of equity may, in the exercise of its sound discretion, decline to intervene in purely local controversies involving only questions of state law which should, in the first instance at least, be litigated in the state courts. See Isseks, *Jurisdiction of the Lower Federal Courts to Enjoin Unauthorized Action of State Officials*, 40 Harv. L. Rev. 969. The decisions of this Court, particularly in recent years, "reflect a doctrine of abstention appropriate to our federal system whereby the federal courts, 'exercising a wise discretion,' restrain their authority because of 'scrupulous regard for the rightful independence of the state governments' and for the smooth working of the federal judiciary." *Railroad Comm'n v. Pullman Co.*, 312 U. S. 496, 501. Thus, federal courts have declined to enjoin state criminal prosecutions, *Spielman Motor Sales Co. v. Dodge*, 295 U. S. 89, 95; *Beal*

v. *Missouri Pacific R. Co.*, 312 U. S. 45, 49; *Watson v. Buck*, 313 U. S. 387, 401; *Douglas v. Jeannette*, 319 U. S. 157; to interfere with the collection of state taxes, *Matthew's v. Rodgers*, 284 U. S. 521; *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U. S. 293; to appoint a receiver to manage the affairs of an insolvent state bank, when the State had entrusted liquidation to a state agency, *Pennsylvania v. Williams*, 294 U. S. 176; to interfere with a state agency's establishment of local utility rates, *Central Kentucky Gas Co. v. Railroad Commission*, 290 U. S. 264, 271; or to intervene in controversies found to involve the shaping of state administrative policy, *Burford v. Sun Oil Co.*, 319 U. S. 315. Where a definitive ruling by a state court upon a doubtful question of state law might avoid decision of serious constitutional questions, a federal court adhering to the basic principle that substantial constitutional questions should be decided only when no alternatives are open, may stay the federal suit in order to enable the parties to litigate the state question in the state courts. *Railroad Comm'n v. Pullman Co.*, 312 U. S. 496; *Railroad Comm'n v. Rowan & Nichols Oil Co.*, 310 U. S. 573, 311 U. S. 614-615; *Chicago v. Fieldcrest Dairies*, 316 U. S. 168.

Whatever the implications which may be drawn from the *Barney* case as a self-imposed judicial limitation on the jurisdiction of the federal courts in civil cases, its authority upon the existence of

state action *vel non*, for purposes of invoking the penal sanctions of Section 20, can no longer be accepted. As a commentator has said, its suggestion that the defendants were not acting for the State "is unmistakably erroneous. The Board of Rapid Transit Commissioners *was* acting on behalf of the state of New York. There *was* state action. State officials *did* act. Any other conclusion is a metaphysical denial of the actual facts." Isseks, *supra*, at 972.

Our conclusion that Section 20 is to be construed as applicable to deprivations of constitutional right made by subordinate state officials, acting in the name of and for the State, even though not authorized by it, is fortified by the legislative history of the provision. Section 20 was enacted to enforce the Fourteenth Amendment. See Cong. Globe, 41st Cong., 2d sess., pp. 1536, 3480, 3658, 3690, 3807-3808, 3881; Flack, *The Adoption of the Fourteenth Amendment* (1908), pp. 219, 223, 227. See also *Hague v. C. I. O.*, 307 U. S. 496, 510; *United States v. Mosley*, 238 U. S. 383, 387, 388. Its precursor was § 2 of the Civil Rights Act of April 9, 1866, 14 Stat. 27.⁶ Senator Trumbull, chairman of the

⁶ "That any person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or cause to be subjected, any inhabitant of any State or Territory to the deprivation of any right secured or protected by this act, or to different punishment, pains, or penalties on account of such person having at any time been held in a condition of

Senate Judiciary Committee which reported the bill which eventually became the 1866 Act, stated that its purpose was "to protect all persons in the United States in their civil rights, and furnish the means of their vindication." Cong. Globe, 39th Cong., 1st sess., p. 211. He also stated that "The bill applies to white men as well as black men." *Id.*, p. 599.

Section 2 of the Civil Rights Act of 1866 was amended four years later. On February 24, 1870, Senator Stewart introduced a bill (S. 365, 41st Cong., 2d Sess.), § 2 of which became § 17 of the Act of May 31, 1870, 16 Stat. 140. He stated (Cong. Globe, 41st Cong., 2d sess., p. 1536) that the bill "extends the operation of the civil rights bill, which is well known in the Senate and to the country, to all persons within the jurisdiction of the United States." As finally adopted, the provision read as follows:

That any person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or cause to be subjected, any inhabitant of any State or Territory to the deprivation of any right secured or protected by * * * this act, or to different punishment, pains, or penalties on

slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, or by reason of his color or race, than is prescribed for the punishment of white persons, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine. * * *

account of such person being an alien, or by reason of his color or race, than is prescribed for the punishment of citizens, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or both, in the discretion of the court.

Minor changes in phraseology were introduced by the revisers in 1874,⁷ and the draftsmen of the Criminal Code of 1909.⁸ So far as its substance is concerned, however, Section 20 is descended from § 2 of the Civil Rights Act of 1866, as amended by § 17 of the 1870 Act.

R. S. § 5510: "Every person who, under color of any law, statute, ordinance, regulation, or custom, subjects, or causes to be subjected, any inhabitant of any State or Territory to the deprivation of any rights, privileges, or immunities, secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color or race, than are prescribed for the punishment of citizens, shall be punished by a fine of not more than one thousand dollars, or by imprisonment not more than one year, or by both."

⁷Act of March 4, 1909, 35 Stat. 1092, c. 321, § 20: "Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both."

As the Chief Justice observed in the *Classic* case (313 U. S. at 328, n. 10), "While the legislative history indicates that the immediate occasion for the adoption of § 20, like the Fourteenth Amendment itself, was the more adequate protection of the colored race and their civil rights, it shows that neither was restricted to the purpose and that the first clause of § 20 was intended to protect the constitutional rights of all inhabitants of the states." If Section 20 were to be limited to cases in which the actions of the state officers were expressly authorized by state law, the statute would have only the most trivial scope—particularly in view of the requirement that deprivations of constitutional right be "willful." Where an action is based upon an explicit direction of state law, a mistake of law may well negate the element of willfulness. Cf. *United States v. Murdock*, 290 U. S. 389. There is no justification in its legislative history for thus reducing the scope of the statute which, in the clearest and most unequivocal language, was designed to confer broad federal protection upon the enjoyment of basic constitutional rights. See *Catlette v. United States*, 132 F. (2d) 902 (C. C. A. 4); *Culp v. United States*, 131 F. (2d) 93 (C. C. A. 8); *United States v. Trierweiler*, 52 F. Supp. 4 (E. D. Ill.); *United States v. Sutherland*, 37 F. Supp. 344 (N. D. Ga.) Cf. Mr. Justice Holmes in *United States v. Mosley*, 238 U. S. 383, 388.

B. THE PETITIONERS ACTED UNDER COLOR OF LAW

If, as we have attempted to show, the petitioners' conduct constituted state action within the meaning of the statute, there can be no doubt that their acts were done under color of law. The petitioners acted in their capacity as state law-enforcement officers; they did not purport to be acting as private individuals not endowed with the authority of the State. Since they were acting in the performance of their official duties, it is immaterial that they may have exceeded their authority. "Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of' state law." *United States v. Classic*, 313 U. S. 299, 326, and cases cited.

To sustain the construction we place upon Section 20 would not imply that every transgression of duty by a state official would be prosecuted criminally in the federal courts. Similar fears were expressed—unjustifiedly, as the subsequent history of the statute shows—when § 2 of the Civil Rights Act of 1866 was being debated. Senator Garrett Davis of Kentucky said (Cong. Globe, 39th Cong., 1st sess., p. 598) that "this short bill repeals all the penal laws of the States. * * * The cases of offense and misdemeanor that in these respects the honorable

Senator's bill would bring up every day in the United States would be as numerous as the passing minutes. The result would be to utterly subvert our Government; it would be wholly incompatible with its principles, with its provisions, or with its spirit."

That the dangers envisaged by Senator Davis never were realized is attributable to the explicit provisions of the statute itself, as well as its administration in conformity with the basic objectives sought to be attained by Congress. Four conditions must be met before the penal sanctions of Section 20 can be invoked: (1) there must be deprivation of a right secured by the Constitution or laws of the United States, or subjection of an inhabitant of the United States to different punishments on account of his alienage, color, or race, than are prescribed for the punishment of citizens; (2) where the right consists of being secure against unconstitutional state action, the deprivation must be referable to a State; (3) the action must be taken under color of law; and (4) it must be willful.

Implicit in the administration of the statute has been the assumption that, even though rights secured by the federal Constitution are involved, the primary vindicator of those rights must continue to be the State itself. While Congress was acting to safeguard constitutional rights, there is no evidence that Congress contemplated that the

States would be derelict or impotent in protecting such rights. On the contrary, Congress was complementing existing machinery for the enforcement of constitutional rights. It was providing additional sanctions for the deprivation of constitutional rights, and not substituting federal for state sanctions. This legislative policy is to be found in several provisions of the early civil rights acts. Section 3 of the Act of April 9, 1866, 14 Stat. 27, gave the federal district courts jurisdiction of "all causes, civil and criminal, affecting persons who are denied or cannot enforce in the courts or judicial tribunals of the State or locality where they may be any of the rights secured to them by the first section of this act * * *." And Section 3 of the Act of April 20, 1871, 17 Stat. 13, 14, provided that where the constitutional rights of any group of persons were violated, "and the constituted authorities of such State shall either be unable to protect, or shall, from any cause, fail in or refuse protection of the people in such rights, such facts shall be deemed a denial by such State of the equal protection of the laws * * *."

Effective safeguards assure enforcement of Section 20 in accordance with the policy implicit in its language and history:

(1) Congressional supervision of the policies pursued by the Department of Justice has been careful and thorough. Particularly in recent

years, the staffing and activities of the Civil Rights Section have annually been given close scrutiny.⁹ Any extension of the statute beyond its proper limits could be terminated through withdrawal of the funds necessary to make such increased activity possible.

(2) Prosecutions of all cases under the statute must be brought in the district in which the crime was committed. The judge and the prosecutor are citizens of the state in which the trial is held. The grand jurors, if the prosecution is instituted by indictment, reside within the judicial district, and the petit jurors within the division. The nature of prosecutions under Section 20 is such that the jurors are usually made aware of the implications with regard to alleged federal interference with state law enforcement—an awareness which is often sharpened by the arguments of defense counsel (as in the case at bar, see R. 204-206).

(3) The Department of Justice has established a policy of strict self-limitation with regard to prosecutions under the civil rights acts. When violations of such statutes are reported, the Department requires that efforts be made to en-

⁹ See, e. g., Hearings before the Subcommittee of the Committee on Appropriations, House of Representatives, 76th Cong., 1st sess., on the Department of Justice Appropriation Bill for 1940, pp. 58 and 59; 76th Cong., 3d sess., Hearings Department of Justice Appropriation Bill for 1941, pp. 65 and 66; 77th Cong., 2d sess., Hearings, Department of Justice Appropriation Bill for 1943, pp. 63 and 64.

courage state officials to take appropriate action under state law.¹⁰ To assure consistent observance of this policy in the enforcement of the civil rights statutes, all United States Attorneys have been instructed to submit cases to the Department for approval before prosecutions or investigations are instituted.¹¹ The number of prosecutions which have been brought under the civil rights statutes is small. No statistics are available with respect to the number of prosecutions prior to 1939, when a special Civil Rights Section was established in the Department of Justice. Only two cases during this period have been reported: *United States v. Baughin*, 10 Fed. 730 (C. C. S. D. Ohio), and *United States v. Stone*, 188 Fed. 836 (D. Md.). Since 1939, the number of complaints received annually by the Civil Rights Section has ranged from 8,000 to 14,000, but in no year have prosecutions under both Sections 20 and 19, its companion statute, exceeded 76. In the fiscal year 1942, for example, 31 full investigations of alleged violations of Section 20 were conducted, and three cases were brought to trial. In the

¹⁰ Testimony of Assistant Attorney General McMahon before the Subcommittee of the Committee on Appropriations of the House of Representatives at Hearings on the Department of Justice Appropriation Bill for 1940, p. 59; Supplements 2 and 3 to Department Circular No. 3356 (Appendix, *infra*, pp. 56-58).

¹¹ Supplements 1, 2 and 3 to Circular No. 3356 (Appendix, *infra*, pp. 56-58).

following fiscal year there were 55 such investigations, and prosecutions were instituted in 12 cases.

Complaints of violations are often submitted to the Department by local law enforcement officials who for one reason or another may feel themselves powerless to take action under state law. It is primarily in this area, namely, where the official position of the wrongdoers has apparently rendered the State unable or unwilling to institute proceedings, that the statute has come into operation. Thus, in the case at bar, the Solicitor General of the Albany Circuit in the State of Georgia, which included Baker County, testified (R. 42): "There has been no complaint filed with me in connection with the death of Bobby Hall against Sheriff Screws, Jones, and Kelley. As to whom I depend for investigation of matters that come into my Court, I am an attorney, I am not a detective and I depend on evidence that is available after I come to Court or get into the case * * *. The sheriffs and other peace officers of the community generally get the evidence and I act as the attorney for the state. I rely on my sheriffs and policemen and peace officers and private citizens also who prosecute each other to investigate the charges that are lodged in Court."

The Government recognizes that this is the first case brought before this Court in which Section 20 has been applied to deprivations of rights

secured by the Fourteenth Amendment. But here, as in *United States v. Classic*, 313 U. S. 299, 324, "It is no extension of the criminal statute * * * to find a violation of it in a new method of interference with the right which its words protect. For it is the constitutional right, regardless of the method of interference, which is the subject of the statute and which in precise terms it protects from injury and oppression." And compare *Browder v. United States*, 312 U. S. 335, 339-340: "Old laws apply to changed situations. The reach of the act is not sustained or opposed by the fact that it is sought to bring new situations under its terms. While a statute speaks from its enactment, even a criminal statute embraces everything which subsequently falls within its scope." To adapt the words of Mr. Justice Holmes in *United States v. Mosby*, 238 U. S. 383, 388: Just as the Fourteenth Amendment was adopted with a view to the protection of the colored race but has been found to be equally important in its application to the rights of all, Section 20 had a general scope and used general words that have become most important now. Even if we cannot interpret the past by the present, we must not allow the past so far to affect the present as to deprive the people of the United States of the general protection which on its face the statute most reasonably affords.

SECTION 20, AS APPLIED HERE, IS NOT SO VAGUE AND
INDEFINITE AS TO BE UNCONSTITUTIONAL

In his dissenting opinion in the court below (R. 223-227), Judge Sibley expressed the view that Section 20 is unconstitutional because the phrase "rights, privileges and immunities secured and protected by the Constitution and laws of the United States" is unduly vague and indefinite; and that the statute provides "no ascertainable standard of guilt, and the right to be precisely informed of the things to be charged as crimes is not practically preserved" (R. 224, 225). The petitioners have made no such contention either here or in the courts below. But Judge Sibley's challenge to the validity of a statute whose constitutionality has been assumed since its enactment in 1866 merits an answer.

In *United States v. Classic*, 313 U. S. 299, 328-329, it was held that the comprehensive character of the rights protected by Section 20 does not subject the statute to constitutional infirmities: "The generality of the section, made applicable as it is to deprivations of any constitutional right, does not obscure its meaning or impair its force within the scope of its application, which is restricted by its terms to deprivations which are willfully inflicted by those acting under color of any law, statute and the like." This Court has repeatedly upheld the validity of Section 19 (18 U. S. C. 51) which

punishes conspiracies to injure a citizen in the exercise "of any right or privilege secured to him by the Constitution or laws of the United States." See *Ex parte Yarbrough*, 110 U. S. 651; *United States v. Waddell*, 112 U. S. 76; *Logan v. United States*, 144 U. S. 263; *In re Quarles and Butler*, 158 U. S. 532; *Motes v. United States*, 178 U. S. 458; *Gunn v. United States*, 238 U. S. 347; *United States v. Mosley*, 238 U. S. 383; *United States v. Saylor*, 322 U. S. 385. In *United States v. Cohen Grocery Co.*, 255 U. S. 81, 89, upon which Judge Sibley principally relied, a conviction was held unconstitutional where the statute left open "the widest conceivable inquiry, the scope of which no one can foresee and the result of which no one can foreshadow or adequately guard against" and where "to attempt to enforce the section would be the exact equivalent of an effort to carry out a statute which in terms merely penalized and punished all acts detrimental to the public interest when unjust and unreasonable in the estimation of the court and jury."

We submit that the comprehensiveness of Section 20 is of a different order. Cf. *United States v. Ragen*, 314 U. S. 513, 523. It was natural that Congress, in seeking to protect all rights secured by the Constitution, should not undertake to catalogue every federally protected right. An attempt to do so would probably have led to more

vagueness and indefiniteness than is inherent in the form of the statute chosen by Congress. This Court long ago recognized that the ideal of complete specificity must yield to the practical requirements of legislation. *Miller v. Strahl*, 239 U. S. 426, 434; *Bandini Company v. Superior Court*, 284 U. S. 8, 18; *Miller v. Oregon*, 273 U. S. 657. The possibility that in circumstances not here presented there may be difficulty in determining whether there has been such a deprivation of constitutional right as to come within the penalties of Section 20 is no reason for doubting the validity of the statute in cases where its applicability is clear. The enforcement of almost every statute involves an inevitable fringe of uncertainty and doubt: " * * * the law is full of instances where a man's fate depends upon his estimating rightly, that is, as the jury subsequently estimates it, some matter of degree." *Nash v. United States*, 229 U. S. 373, 377. "Whenever the law draws a line there will be cases very near each other on opposite sides." *United States v. Wurzbach*, 280 U. S. 396, 399.

CONCLUSION

It is respectfully submitted that the petitioners were properly convicted and that the decision below should be affirmed.

✓ CHARLES FAHY,
Solicitor General.

✓ TOM C. CLARK,
Assistant Attorney General.

✓ ROBERT S. ERDÄHL,
VICTOR W. ROTNEM,
Special Assistants to the Attorney General.

IRVING S. SHAPIRO,
Attorney.

OCTOBER 1944.

APPENDIX

Extracts from departmental circulars

1. Supplement 1 to Circular No. 3356, issued May 21, 1940:

* * * This memorandum is intended for the assistance of United States Attorneys and their staffs in responding to complaints and in supervising investigations of alleged violations of Federal law in civil liberties matters. Because of the importance of unified and consistent legal theory and prosecution policy in this field, it is requested that no indictments under 18 U. S. C. §§ 51, 52 be presented without clearance from the Department.

2. Supplement 2 to Department Circular No. 3356, issued April 4, 1942:

The existence of war must not be permitted to serve as an excuse for the oppression of any racial, religious, economic, or political group. You are directed to employ every facility available to your offices to secure the cooperation of state and local officials to prevent and rectify situations constituting a threat to the Federally secured civil rights herein discussed. In the interest of consistency and uniformity in the conduct of investigations, the policy of directing all original complaints to the Civil Rights Section of the Criminal Division for clearance and instruction before

embarking on a full investigation will be continued. No investigation or prosecution of these cases should be commenced through the offices of the United States Attorneys without Departmental sanction and because of the importance of maintaining consistent legal theory in these cases, it is requested that proposed indictments be submitted to the Department for consideration before undertaking prosecutive action.

3. Supplement 3 to Circular No. 3356, issued November 3, 1943:

The Department does not desire to institute wholesale prosecutions against overzealous public officials who have deprived others of their religious freedom by the unconstitutional application of leaflet distribution, ordinances or by persisting in the enforcement of compulsory flag salute exercise regulations against school children whose consciences forbid their participation. Prosecutive action should be reserved for those cases where that remains the only means of alleviating the situation. When, therefore, complaints of interferences with religious liberty by state officials are called to your attention, you are requested to contact the appropriate, responsible state officials, pointing out to them the possibility that their actions may involve a denial of constitutional guarantees and seek their cooperation to the end that the activities complained of may be avoided. It is felt that most of the difficulties involving alleged state interference with religious freedom can be avoided through the prompt mediation of the United States Attorneys with the local authorities by letter or personal conference.

You are requested to continue to advise the Department of all complaints coming to you regarding alleged violations of Sections 51 and 52, Title 18, United States Code, and to inform the Department of the results of your efforts to prevent interference with religious freedom in accordance with the procedure suggested above.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

NO. 42

M. CLAUD SCREWS, FRANK EDWARD JONES,
AND JIM BOB KELLEY, *Petitioners*

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT

**MOTION FOR LEAVE TO FILE BRIEF
AS AMICUS CURIAE**

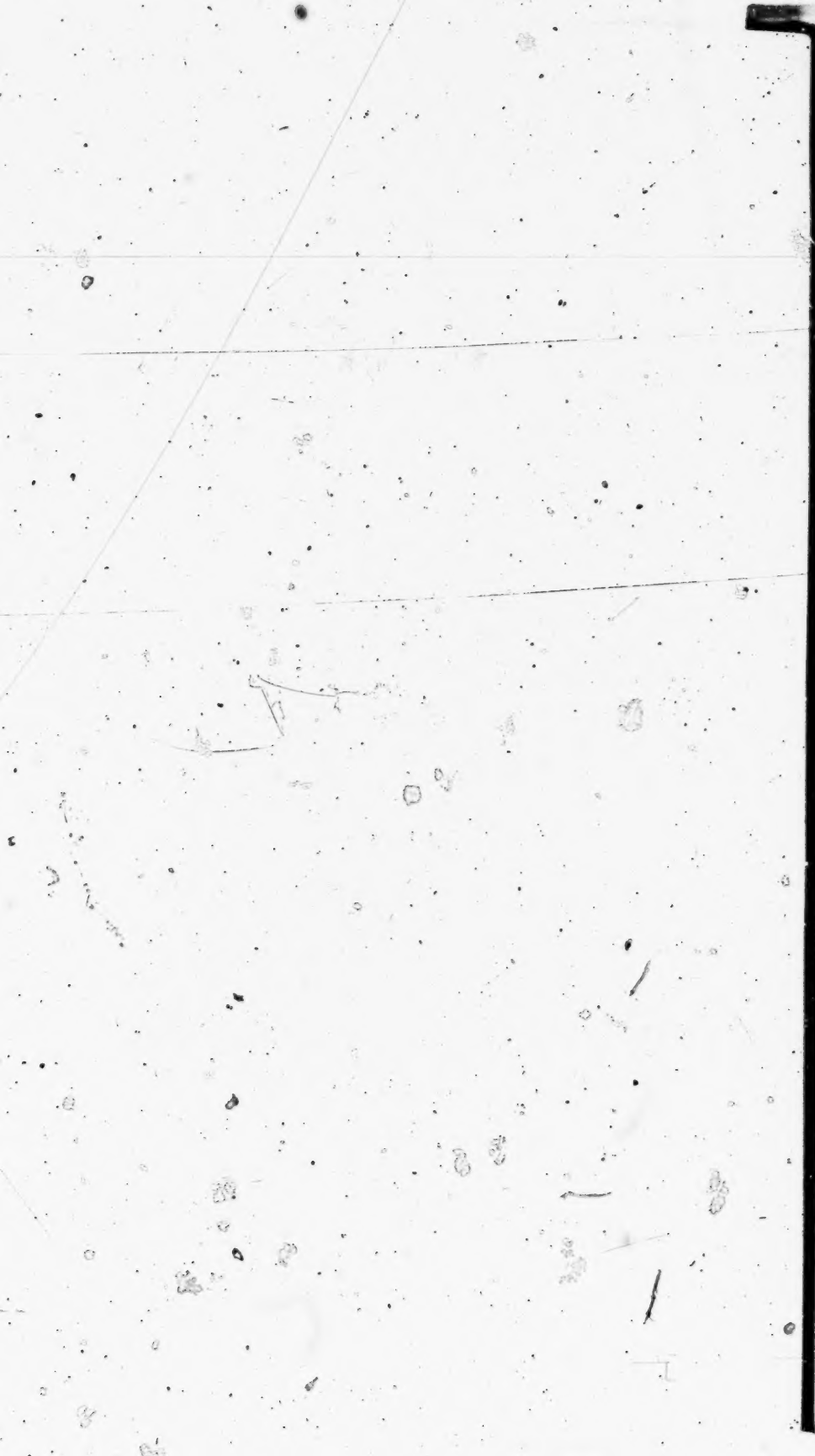
WILLIAM H. HASTIE,

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EDWARD DUDLEY,
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To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The undersigned, as counsel for and on behalf of the National Association for the Advancement of Colored People, respectfully move this honorable Court for leave to file the accompanying brief in this case as *amicus curiae*.

The National Association for the Advancement of Colored People is a nation-wide membership organization which has for the past thirty-five years continuously advocated full citizenship rights for all American citizens. This Association works for the protection of the civil rights guar-

anted by the Constitution and laws of the United States. For many years it has supported and assisted individuals and groups whose basic civil rights have been threatened or invaded. We believe that the issues presented in this case and especially those raised in oral argument before this honorable Court are of importance to the Negro race generally, and to all persons interested in the protection of civil rights.

As will appear in greater detail hereinafter, Section 20 of the Criminal Code and companion legislation constitute the basic statutory implementation of the Fourteenth Amendment and other civil rights guarantees of the National sovereign. It was believed prior to the oral argument herein that the validity of Section 20 of the Criminal Code was clearly established by adjudications of this Court. However, interrogation of counsel at oral argument of this case revealed substantial questions concerning the validity of this important statute.

It is for the purpose of presenting written argument addressed to the questions thus raised that this motion is filed.

The Solicitor General on behalf of the United States has consented to the filing of this brief. A request to counsel for petitioners, *Screws et al*, that he also consent, remains unanswered.

WILLIAM H. HASTIE,
THURGOOD MARSHALL,
LEON A. RANSOM.

*Counsel for National
Association for the Advancement of
Colored People, Amicus Curiae.*

EDWARD DUDLEY,
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OPINIONS BELOW

The majority and dissenting opinions in the Circuit Court of Appeals (R. 217-227) and the concurring opinion of Judge Waller on petition for rehearing (R. 232) are reported in 140 F. (2) 662.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on January 14, 1944 (R. 227), and a petition for rehearing (R. 228-231) was denied on February 18, 1944 (R. 232). The petition for a writ of certiorari was filed on March 18, 1944, and was granted on April 24, 1944 (R. 236). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of

February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court on May 7, 1934.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the Constitution provides in pertinent part:

Section 1. . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Section 20 of the Criminal Code (18 U.S.C. 52) provides:

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000, or imprisoned not more than one year, or both.

QUESTION PRESENTED

The argument in this brief is directed to the question

raised during oral argument of this case: *Is Section 20 so vague and indefinite as to be unconstitutional?*

STATEMENT OF THE CASE

The case has been fully stated in the Brief for the United States filed herein.

ARGUMENT

During oral argument in this case question was raised whether or not certain language in Section 20 of the Criminal Code, viz: "Whoever, . . . wilfully subjects, or causes to be subjected any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States," is so vague and indefinite as to cause the statute to be invalid.

Section 20 of the Criminal Code is a part of the second Civil Rights Act¹ which was passed to enforce the provisions of the Fourteenth Amendment, pursuant to the authority of the fifth section of the amendment.² Other provisions of the second Civil Rights Act further protecting basic Civil rights contain language similar to Section 20.

Section 19 of the Criminal Code³ punishes two or more persons who conspire to injure, oppress, threaten or intimidate any citizen "in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States."

These statutes form the bulwark of protection for the basic civil rights guaranteed by the Constitution and laws of the United States. Although originally conceived for the protection of the recently freed Negroes they were enacted for the protection of all citizens regardless of color.

¹ May 31, 1870, 16 Stat. 140; April 5, 1866, sec. 2, 14 Stat. 27.

² *Hague v. C.I.O.* 307 U.S. 496, 510 (1939). See Also: The Adoption of the Fourteenth Amendment by Flack (1908), pp. 219, 223, 227.

³ May 31, 1870, c. 116, sec. 6, 16 Stat. 141.

⁴ See Cong. Globe Congress, 1st Session, pp. 211, 548, 661.

Among the federal rights protected by these statutes are: freedom from discriminatory registration practices;³ right to vote in congressional elections;⁴ right to vote and to have votes counted in primary elections which are integral parts of the election machinery of the states;⁵ right of one in custody of United States Marshall to be protected against lawless violence;⁶ right to inform federal authorities of violations of federal laws and to be protected in giving such information.⁷

If Section 20 is declared to be unconstitutional by reason of vagueness, then it necessarily follows that Section 19 is also unconstitutional because of the similarity of the language of these sections. This would destroy the only criminal sanctions for the protection of many of the basic civil rights of citizens of the United States. Congress intended that the rights of citizens guaranteed by the Constitution and laws, not the subject of specific criminal sanctions, should also be protected. Thus, Congress enacted Sections 19 and 20 in language no more general than that used in other criminal statutes set forth in the Supplemental Memorandum For the United States filed herein.

It has been the experience of the National Association for the Advancement of Colored People that, beyond the reported cases, the deterrent effect of these criminal statutes is very great and of utmost importance. Congress in its wisdom anticipated the danger that in many places unpopular minorities, Negroes in particular, would find no effective protection for their civil rights save through Federal legislation. Public officers, of ill will, undeterred by any strong local opinion favorable to the civil rights of minorities, would in many instances be wholly unrestrained from

³ *Guinn v. U. S.* 238 U. S. 347 (1915)

⁴ *Ex parte Yarbrough* 110 U. S. 651 (1884)

⁵ *U. S. v. Mosely* 238 U. S. 383 (1915)

⁶ *U. S. v. Classic* 313 U. S. 123 (1937)

⁷ See *Logan v. U. S.* 114 U. S. 263 (1892)

⁸ *In re Quarles* 158 U. S. 532 (1895)

the invasion of vital constitutional civil rights but for these criminal sanctions.

Examined in the setting of the foregoing considerations of public policy and social interests, Section 20 stands as a valid and reasonable form of criminal statute. If a challenge to its validity is to have rational basis it must be predicated either upon some difficulty of intelligible and systematic application of the statute or upon some unfairness to the accused resulting from lack of specificity in defining the offense. The latter difficulty arises where a statute leaves the dividing line between lawful and unlawful behavior to conjecture.

Several limitations are significant in relieving Section 20 of the Criminal Code of the objection of undue generality. First, the statute is limited to behavior "under color of state law." The meaning of this phrase and the area of applicability which it defines have been stated clearly and succinctly by this Court: "Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of' state law." See *United States v. Classic, supra*.

Second, and even more important for present purposes, the prohibition of the statute is expressly limited to wilful misconduct. Wilfulness has properly and characteristically been given restrictive judicial interpretation in the construction of statutes defining crimes. "The word—when used in a criminal statute—generally means an act done with a bad purpose—; without justifiable excuse—; stubbornly, obstinately, perversely—." See *United States v. Murdock*, 290 U. S. 389, 394. Compare *United States v. Illinois Central R. R.*, 303 U. S. 239. Here the word "wilfully" may well be given the effect of limiting the application of Section 20 to cases in which the conduct complained of is so reprehensible in character that its intentional perpetration evinces a design to do evil and an intention to

inflict injury without justification or excuse. Finally, within the area of applicability as thus restricted there is the further restriction that such wilful misconduct must be directed at and must in fact accomplish the deprivation of some right secured or protected by the Constitution and laws of the United States.

The three foregoing limitations: (1) action under color of state law, (2) wilful misconduct and (3) consequent invasion of a federally protected right, adequately restrict the statute and define the crime. They make the meaning of the statute intelligible and its application systematic. The limitation to wilful misconduct is particularly important when consideration is given to the problem of fairness to the accused. The wrongdoer who indulges in reprehensible and intentionally injurious conduct—in this case a mortal battery of a prisoner—is not in position to complain that he is without sufficient information as to whether the consequence of his misbehavior are within the general categories of injury stated in Section 20. It is certainly not unreasonable that one so misconducting himself should bear the risk of punishment if his misconduct infringes any federally protected right and thus comes within the area of Federal cognizance. Fairness to him is accomplished by limiting criminality to conduct which he must know to be wrong. Comprehensive protection of civil rights is achieved by defining the prohibited consequences of such misconduct broadly. The statute is thus fair, intelligible and adapted to serving a large public and social purpose.

7
CONCLUSION

It is respectfully submitted that the affirmance of the judgment below will achieve real justice in the case at bar and at the same time reaffirm the validity of a statute which is vital to the protection of fundamental civil rights.

Respectfully submitted,

WILLIAM H. HASTIE,
THURGOOD MARSHALL,
LEON A. RANSOM,

*Counsel for National
Association for the Advancement of
Colored People, Amicus Curiae.*

EDWARD DUDLEY,
of Counsel.

SUPREME COURT OF THE UNITED STATES.

No. 42.—OCTOBER TERM, 1944.

M. Claude Screws, Frank Edward
Jones and Jim Bob Kelley, Pe-
titioners,

vs.

The United States of America.

On Writ of Certiorari to the
United States Circuit Court
of Appeals for the Fifth
Circuit.

[May 7, 1945.]

Mr. Justice Douglas announced the judgment of the Court and delivered the following opinion, in which the Chief Justice, Mr. Justice Black and Mr. Justice Reed concur.

He enlisted the assistance of petitioner Jones, a policeman, and petitioner Kelley, a special deputy, in arresting Robert Hall, a citizen of the United States and of Georgia. The arrest was made late at night at Hall's home on a warrant charging Hall with theft of a tire. Hall, a young negro about thirty years of age, was handcuffed and taken by car to the court house. As Hall alighted from the car at the court house square, the three petitioners began beating him with their fists and with a solid-bar blackjack about eight inches long and weighing two pounds. They claimed Hall had reached for a gun and had used insulting language as he alighted from the car. But after Hall, still handcuffed, had been knocked to the ground they continued to beat him from fifteen to thirty minutes until he was unconscious. Hall was then dragged feet first through the court house yard into the jail and thrown upon the floor dying. An ambulance was called and Hall was removed to a hospital where he died within the hour and without regaining consciousness. There was evidence that Screws held a grudge against Hall and had threatened to "get" him.

An indictment was returned against petitioners—one count charging a violation of § 20 of the Criminal Code, 18 U. S. C. § 52 and another charging a conspiracy to violate § 20 contrary to § 37 of the Criminal Code, 18 U. S. C. § 88. Sec. 20 provides:

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000, or imprisoned not more than one year, or both."

The indictment charged that petitioners, acting under color of the laws of Georgia, "willfully" caused Hall to be deprived of "rights, privileges, or immunities secured or protected" to him by the Fourteenth Amendment—the right not to be deprived of life without due process of law; the right to be tried, upon the charge on which he was arrested, by due process of law and if found guilty to be punished in accordance with the laws of Georgia; that is to say that petitioners "unlawfully and wrongfully did assault, strike and beat the said Robert Hall about the head with human fists and a blackjack causing injuries" to Hall "which were the proximate and immediate cause of his death." A like charge was made in the conspiracy count.

The case was tried to a jury.¹ The court charged the jury that due process of law gave one charged with a crime the right to be tried by a jury and sentenced by a court. On the question of intent it charged that

"... if these defendants, without its being necessary to make the arrest effectual or necessary to their own personal protection, beat this man, assaulted him or killed him while he was under arrest, then they would be acting illegally under color of law, as stated by this statute, and would be depriving the prisoner of certain constitutional rights guaranteed to him by the Constitution of the United States and consented to by the State of Georgia."

The jury returned a verdict of guilty and a fine and imprisonment on each count was imposed. The Circuit Court of Appeals affirmed the judgment of conviction, one judge dissenting, 140 F. 2d 662. The case is here on a petition for a writ of certiorari.

¹ A demurrer to the indictment alleging among other things that the matters charged did not constitute an offense against the United States and did not come within the purview of § 20 was overruled. At the end of the government's case petitioners' motion for a directed verdict on the grounds of the insufficiency of the evidence was denied.

which we granted because of the importance in the administration of the criminal laws of the questions presented.

I.

We are met at the outset with the claim that § 20 is unconstitutional, insofar as it makes criminal acts in violation of the due process clause of the Fourteenth Amendment. The argument runs as follows: It is true that this Act as construed in *United States v. Classic*, 313 U. S. 299, 328, was upheld in its application to certain ballot box frauds committed by state officials. But in that case the constitutional rights protected were the rights to vote specifically guaranteed by Art. I, § 2 and § 4 of the Constitution. Here there is no ascertainable standard of guilt. There have been conflicting views in the Court as to the proper construction of the due process clause. The majority have quite consistently construed it in broad general terms. Thus it was stated in *Twining v. New Jersey*, 211 U. S. 78, 101, that due process requires that "no change in ancient procedure can be made which disregards those fundamental principles, to be ascertained from time to time by judicial action, which have relation to process of law and protect the citizen in his private right, and guard him against the arbitrary action of government." In *Snyder v. Massachusetts*, 291 U. S. 97, 105, it was said that due process prevents state action which "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." The same standard was expressed in *Palko v. Connecticut*, 302 U. S. 319, 325, in terms of a "scheme of ordered liberty". And the same idea was recently phrased as follows: "The phrase formulates a concept less rigid and more fluid than those envisaged in other specific and particular provisions of the Bill of Rights. Its application is less a matter of rule. Asserted denial is to be tested by an appraisal of the totality of facts in a given case. That which may, in one setting, constitute a denial of fundamental fairness, shocking to the universal sense of justice, may, in other circumstances, and in the light of other considerations, fall short of such denial." *Bettz v. Brady*, 316 U. S. 455, 462.

It is said that the Act must be read as if it contained those broad and fluid definitions of due process and that if it is so read it provides no ascertainable standard of guilt. It is pointed out that in *United States v. Cohen Grocery Co.*, 255 U. S. 81, 89, an Act of Congress was struck down, the enforcement of which would

have been "the exact equivalent of an effort to carry out a statute which in terms merely penalized and punished all acts detrimental to the public interest when unjust and unreasonable in the estimation of the court and jury." In that case the act declared criminal was the making of "any unjust or unreasonable rate or charge in handling or dealing in or with any necessities." 255 U. S. p. 86. The Act contained no definition of an "unjust or unreasonable rate" nor did it refer to any source where the measure of "unjust or unreasonable" could be ascertained. In the instant case the decisions of the courts are, to be sure, a source of reference for ascertaining the specific content of the concept of due process. But even so the Act would incorporate by reference a large body of changing and uncertain law. That law is not always reducible to specific rules, is expressible only in general terms, and turns many times on the facts of a particular case. Accordingly, it is argued that such a body of legal principles lacks the basic specificity necessary for criminal statutes under our system of government. Congress did not define what it desired to punish but referred the citizen to a comprehensive law library in order to ascertain what acts were prohibited. To enforce such a statute would be like sanctioning the practice of Caligula who "published the law, but it was written in a very small hand, and posted up in a corner, so that no one could make a copy of it." Suetonius, *Lives of the Twelve Caesars*, p. 278.

The serious character of that challenge to the constitutionality of the Act is emphasized if the customary standard of guilt for statutory crimes is taken. As we shall see specific intent is at times required. Holmes, *The Common Law*, pp. 66 *et seq.* But the general rule was stated in *Ellis v. United States*, 206 U. S. 246, 257, as follows: "If a man intentionally adopts certain conduct in certain circumstances known to him, and that conduct is forbidden by the law under those circumstances, he intentionally breaks the law in the only sense in which the law ever considers intent." And see *Horning v. District of Columbia*, 254 U. S. 133, 137; *Nash v. United States*, 229 U. S. 373, 377. Under that test a local law enforcement officer violates § 20 and commits a federal offense for which he can be sent to the penitentiary if he does an act which some court later holds deprives a person of due process of law. And he is a criminal though his motive was pure and though his purpose was unrelated to

the disregard of any constitutional guarantee. The treacherous ground on which state officials—police, prosecutors, legislators, and judges—would walk is indicated by the character and closeness of decisions of this Court interpreting the due process clause of the Fourteenth Amendment. A confession obtained by too long questioning (*Ashcraft v. Tennessee*, 322 U. S. 143); the enforcement of an ordinance requiring a license for the distribution of religious literature (*Murdock v. Pennsylvania*, 319 U. S. 105); the denial of the assistance of counsel in certain types of cases (Cf. *Powell v. Alabama*, 287 U. S. 45 with *Betts v. Brady*, *supra*); the enforcement of certain types of anti-picketing statutes, (*Thornhill v. Alabama*, 310 U. S. 88); the enforcement of state price control laws (*Olsen v. Nebraska*, 313 U. S. 236); the requirement that public school children salute the flag (*Board of Education v. Barnett*, 319 U. S. 624)—these are illustrative of the kind of state action² which might or might not be caught in the broad reaches of § 20 dependent on the prevailing view of the Court as constituted when the case arose. Those who enforced local law today might not know for many months (and meanwhile could not find out) whether what they did deprived some one of due process of law. The enforcement of a criminal statute so construed would indeed cast law enforcement agencies loose at their own risk on a vast uncharted sea.

If such a construction is not necessary, it should be avoided. This Court has consistently favored that interpretation of legislation which supports its constitutionality. *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 348; *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 30; *Anniston Mfg. Co. v. Davis*, 301 U. S. 337, 351-352. That reason is impelling here so that if at all possible § 20 may be allowed to serve its great purpose—the protection of the individual in his civil liberties.

Sec. 20 was enacted to enforce the Fourteenth Amendment.³ It derives⁴ from § 2 of the Civil Rights Act of April 9, 1866. 14

² Moreover, federal as well as state officials would run afoul of the Act since it speaks of "any law, statute, ordinance, regulation, or custom." Comparable uncertainties will exist in the application of the due process clause of the Fifth Amendment.

³ See Cong. Globe, 41st Cong., 2d Sess., pp. 3807-3808, 3881. Flack, *The Adoption of the Fourteenth Amendment* (1908) pp. 19-54, 219, 223, 227; Hague v. C. I. O., 307 U. S. 496, 510.

⁴ See *United States v. Classic*, 313 U. S. 299, 327, note 10.

Stat. 27.⁵ Senator Trumbull, chairman of the Senate Judiciary Committee which reported the bill, stated that its purpose was "to protect all persons in the United States in their civil rights and furnish the means of their vindication." Cong. Globe, 39th Cong., 1st Sess., p. 211. In origin it was an antidiscrimination measure (as its language indicated), framed to protect negroes in their newly won rights. See Flack, *The Adoption of the Fourteenth Amendment* (1908), p. 21. It was amended by § 17 of the Act of May 31, 1870, 16 Stat. 144,⁶ and made applicable to "any inhabitant of any State or Territory."⁷ The prohibition against the "deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States" was introduced by the revisers in 1874. R. S. § 5519. Those words were taken over from § 1 of the Act of April 20, 1871, 17 Stat. 13 (the so-called Ku-Klux Act) which provided

3 "That any person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or cause to be subjected, any inhabitant of any State or Territory to the deprivation of any right secured or protected by this act, or to different punishment, pains, or penalties on account of such person having at any time been held in a condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, or by reason of his color or race, than is prescribed for the punishment of white persons, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or both, in the discretion of the court."

6 "That any person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or cause to be subjected, any inhabitant of any State or Territory to the deprivation of any right secured or protected by the last preceding section of this act, or to different punishment, pains, or penalties on account of such person being an alien, or by reason of his color or race, than is prescribed for the punishment of citizens, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or both, in the discretion of the court."

The preceding section referred to read as follows:

"That all persons within the jurisdiction of the United States shall have the same right in every State and Territory in the United States to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and none other, any law, statute, ordinance, regulation, or custom to the contrary notwithstanding. No tax or charge shall be imposed or enforced by any State upon any person immigrating thereto from a foreign country which is not equally imposed and enforced upon every person immigrating to such State from any other foreign country; and any law of any State in conflict with this provision is hereby declared null and void."

7 Its sponsor, Senator Stewart, stated that "It extends the operation of the civil rights bill, which is well known in the Senate and to the country, to all persons within the jurisdiction of the United States." Cong. Globe, 41st Cong., 2d Sess., p. 1536.

civil suits for redress of such wrongs.⁸ See Cong. Rec., 43d Cong., 1st Sess., p. 828. The 1874 revision was applicable to any person who under color of law, etc., "subjects, or causes to be subjected" any inhabitant to the deprivation of any rights, etc. The requirement for a "willful" violation was introduced by the draftsmen of the Criminal Code of 1909. Act of March 4, 1909, 35 Stat. 1092. And we are told "willfully" was added to § 20 in order to make the section "less severe". 43 Cong. Rec., 60th Cong., 2d Sess., p. 3599.

We hesitate to say that when Congress sought to enforce the Fourteenth Amendment⁹ in this fashion it did a vain thing. We hesitate to conclude that for 80 years this effort of Congress, renewed several times, to protect the important rights of the individual guaranteed by the Fourteenth Amendment has been an idle gesture. Yet if the Act falls by reason of vagueness so far as due process of law is concerned, there would seem to be a similar lack of specificity when the privileges and immunities clause (*Madison v. Kentucky*, 309 U. S. 83) and the equal protection clause (*Smith v. Texas*, 311 U. S. 128; *Hill v. Texas*, 316 U. S. 400) of the Fourteenth Amendment are involved. Only if no construction can save the Act from this claim of unconstitutionality are we willing to reach that result. We do not reach it, for we are of the view that if § 20 is confined more narrowly than the lower courts confined it, it can be preserved as one of the sanctions to the great rights which the Fourteenth Amendment was designed to secure.

II.

We recently pointed out that "willful" is a word "of many meanings, its construction often being influenced by its context." *Spies v. United States*, 317 U. S. 492, 497. At times, as the Court held in *United States v. Murdock*, 290 U. S. 389, 394, the word denotes an act which is intentional rather than accidental. And

⁸ That section provided in part:

"That any person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress;"

This section became § 1979 of the Revised Statutes and is now found in 42 U. S. C. § 1983. See *Hague v. C. I. O.*, *supra*, note 3, p. 510.

⁹ Sec. 5 thereof provides: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this Article."

see *United States v. Illinois Cent. R. Co.*, 303 U. S. 239. But "when used in a criminal statute it generally means an act done with a bad purpose." *Id.*, p. 394. And see *Felton v. United States*, 96 U. S. 699; *Potter v. United States*, 155 U. S. 438; *Spurr v. United States*, 174 U. S. 728; *Hargrove v. United States*, 67 F. 820. In that event something more is required than the doing of the act proscribed by the statute. Cf. *United States v. Ballat*, 258 U. S. 250. An evil motive to accomplish that which the statute condemns becomes a constituent element of the crime. *Spurr v. United States*, *supra*, p. 734; *United States v. Mardock*, *supra*, p. 395. And that issue must be submitted to the jury under appropriate instructions. *United States v. Ragen*, 314 U. S. 513, 524.

An analysis of the cases in which "willfully" has been held to connote more than an act which is voluntary or intentional would not prove helpful as each turns on its own peculiar facts. Those cases, however, make clear that if we construe "willfully" in § 20 as connoting a purpose to deprive a person of a specific constitutional right, we would introduce no innovation. The Court, indeed, has recognized that the requirement of a specific intent to do a prohibited act may avoid those consequences to the accused which may otherwise render a vague or indefinite statute invalid. The constitutional vice in such a statute is the essential injustice to the accused of placing him on trial for an offense, the nature of which the statute does not define and hence of which it gives no warning. See *United States v. Cohen Grocery Co.*, *supra*. But where the punishment imposed is only for an act knowingly done with the purpose of doing that which the statute prohibits, the accused cannot be said to suffer from lack of warning or knowledge that the act which he does is a violation of law. The requirement that the act must be willful or purposeful may not render certain, for all purposes, a statutory definition of the crime which is in some respects uncertain. But it does relieve the statute of the objection that it punishes without warning an offense of which the accused was unaware. That was pointed out by Mr. Justice Brandeis speaking for the Court in *Omachevarria v. Idaho*, 246 U. S. 343. An Idaho statute made it a misdemeanor to graze sheep "upon any range usually occupied by any cattle grower." The argument was that the statute was void for indefiniteness because it failed to provide for the ascertainment of boundaries of a

"range" or for determining what length of time was necessary to make a prior occupation a "usual" one. The Court ruled that "any danger to sheepmen which might otherwise arise from indefiniteness, is removed by § 6314 of Revised Codes, which provides that: 'In every crime or public offense there must exist a union, or joint operation, of act and intent, or criminal negligence.'" *Id.*, p. 348. A similar ruling was made in *Hygrade Provision Co. v. Sherman*, 266 U. S. 497. The charge was that a criminal statute which regulated the sale of "kosher" meat or products "sanctioned by the orthodox Hebrew religious requirements" was unconstitutional for want of any ascertainable standard of guilt. The Court speaking through Mr. Justice Sutherland stated, "... since the statutes require a specific intent to defraud in order to encounter their prohibitions, the hazard of prosecution which appellants fear loses whatever substantial foundation it might have in the absence of such requirement." 266 U. S. pp. 502-503. In *United States v. Ragen*, *supra*, we took that course in a prosecution for willful evasion of a federal income tax where it was alleged that the defendant had deducted more than "reasonable" allowances for salaries. By construing the statute to require proof of bad faith we avoided the serious question which the rule of *United States v. Cohen Grocery Co.*, *supra*, might have presented. We think a like course is appropriate here.

Moreover, the history of § 20 affords some support for that narrower construction. As we have seen, the word "willfully" was not added to the Act until 1909. Prior to that time it may be that Congress intended that he who deprived a person of any right protected by the Constitution should be liable without more. That was the pattern of criminal legislation which has been sustained without any charge or proof of *scienter*. *Shervlin-Carpenter Co. v. Minnesota*, 218 U. S. 57; *United States v. Balint*, *supra*. And the present Act in its original form would have been susceptible of the same interpretation apart from the equal protection clause of the Fourteenth Amendment, where "purposeful discriminatory" action must be shown. *Snowden v. Hughes*, 321 U. S. 1, 8-9. But as we have seen, the word "willfully" was added to make the section "less severe". We think the inference is permissible that its severity was to be lessened by making it applicable only where the requisite bad purpose was present, thus requiring specific intent not only where discrimination is claimed but in other situations as well. We repeat that the presence of

a bad purpose or evil intent alone may not be sufficient. We do say that a requirement of a specific intent to deprive a person of a federal right made definite by decision or other rule of law saves the Act from any charge of unconstitutionality on the grounds of vagueness.

Once the section is given that construction, we think that the claim that the section lacks an ascertainable standard of guilt must fail. The constitutional requirement that a criminal statute be definite serves a high function. It gives a person acting with reference to the statute fair warning that his conduct is within its prohibition. This requirement is met when a statute prohibits only "willful" acts in the sense we have explained. One who does act with such specific intent is aware that what he does is precisely that which the statute forbids. He is under no necessity of guessing whether the statute applies to him (see *Connally v. General Construction Co.*, 269 U. S. 385) for he either knows or acts in reckless disregard of its prohibition of the deprivation of a defined constitutional or other federal right. See *Gorin v. United States*, 312 U. S. 19, 27-28. Nor is such an act beyond the understanding and comprehension of juries summoned to pass on them. The Act would then not become a trap for law enforcement agencies acting in good faith. "A mind intent upon willful evasion is inconsistent with surprised innocence." *United States v. Ragen*, *supra*, p. 524.

It is said, however, that this construction of the Act will not save it from the infirmity of vagueness since neither a law enforcement official nor a trial judge can know with sufficient definiteness the range of rights that are constitutional. But that criticism is wide of the mark. For the specific intent required by the Act is an intent to deprive a person of a right which has been made specific either by the express terms of the Constitution or laws of the United States or by decisions interpreting them. Take the case of a local officer who persists in enforcing a type of ordinance which the Court has held invalid as violative of the guarantees of free speech or freedom of worship. Or a local official continues to select juries in a manner which flies in the teeth of decisions of the Court. If those acts are done willfully, how can the officer possibly claim that he had no fair warning that his acts were prohibited by the statute? He violates the statute not merely because he has a bad purpose but because he acts

defiance of announced rules of law. He who defies a decision interpreting the Constitution knows precisely what he is doing. If sane, he hardly may be heard to say that he knew not what he did. Of course, willful conduct cannot make definite that which is undefined. But willful violators of constitutional requirements, which have been defined, certainly are in no position to say that they had no adequate advance notice that they would be visited with punishment. When they act willfully in the sense in which we use the word, they act in open defiance or in reckless disregard of a constitutional requirement which has been made specific and definite. When they are convicted for so acting, they are not punished for violating an unknowable something.

The Act so construed has a narrower range in all its applications than if it were interpreted in the manner urged by the government. But the only other alternative, if we are to avoid grave constitutional questions, is to construe it as applicable only to those acts which are clearly marked by the specific provisions of the Constitution as deprivations of constitutional rights, privileges, or immunities, and which are knowingly done within the rule of *Ellis v. United States, supra*. But as we have said that course would mean that all protection for violations of due process of law would drop out of the Act. We take the course which makes it possible to preserve the entire Act and save all parts of it from constitutional challenge. If Congress desires to give the Act wider scope, it may find ways of doing so. Moreover, here as in *Apex Hosiery Co. v. Leader*, 310 U. S. 469, we are dealing with a situation where the interpretation of the Act which we adopt does not preclude any state from punishing any act made criminal by its own laws. Indeed, the narrow construction which we have adopted more nearly preserves the traditional balance between the States and the national government in law enforcement than that which is urged upon us.

United States v. Classic, supra, met the test we suggest. In that case we were dealing merely with the validity of an indictment, not with instructions to the jury. The indictment was sufficient since it charged a willful failure and refusal of the defendant-election officials to count the votes cast, by their alteration of the ballots and by their false certification of the number of votes cast for the respective candidates. 313 U. S. pp. 308-309. The right so to vote is guaranteed by Art. I, § 2 and § 4 of the

Constitution. Such a charge is adequate since he who alters ballots or without legal justification destroys them would be acting willfully in the sense in which § 20 uses the term. The fact that the defendants may not have been thinking in constitutional terms is not material where their aim was not to enforce local law but to deprive a citizen of a right and that right was protected by the Constitution. When they so act they at least act in reckless disregard of constitutional prohibitions or guarantees. Likewise, it is plain that basic to the concept of due process of law in a criminal case is a trial—a trial in a court of law, not a "trial by ordeal". *Brown v. Mississippi*, 297 U. S. 278, 285. It could hardly be doubted that they who "under color of any law, statute, ordinance, regulation, or custom" act with that evil motive violate § 20. Those who decide to take the law into their own hands and act as prosecutor, jury, judge, and executioner plainly act to deprive a prisoner of the trial which due process of law guarantees him. And such a purpose need not be expressed; it may at times be reasonably inferred from all the circumstances attendant on the act. See *Tot v. United States*, 319 U. S. 463.

The difficulty here is that this question of intent was not submitted to the jury with the proper instructions. The court charged that petitioners acted illegally if they applied more force than was necessary to make the arrest effectual or to protect themselves from the prisoner's alleged assault. But in view of our construction of the word "willfully" the jury should have been further instructed that it was not sufficient that petitioners had a generally bad purpose. To convict it was necessary for them to find that petitioners had the purpose to deprive the prisoner of a constitutional right, e. g. the right to be tried by a court rather than by ordeal. And in determining whether that requisite bad purpose was present the jury would be entitled to consider all the attendant circumstances—the malice of petitioners, the weapons used in the assault, its character and duration, the provocation, if any, and the like.

It is true that no exception was taken to the trial court's charge. Normally we would under those circumstances not take note of the error. See *Johnson v. United States*, 318 U. S. 189, 200. But there are exceptions to that rule. *United States v.*

Atkinson, 297 U. S. 157, 160; *Clyatt v. United States*, 197 U. S. 207, 221-222. And where the error is so fundamental as not to submit to the jury the essential ingredients of the only offense on which the conviction could rest, we think it is necessary to take note of it on our own motion. Even those guilty of the most heinous offenses are entitled to a fair trial. Whatever the degree of guilt, those charged with a federal crime are entitled to be tried by the standards of guilt which Congress has prescribed.

III.

It is said, however, that petitioners did not act "under color of any law" within the meaning of § 20 of the Criminal Code. We disagree. We are of the view that petitioners acted under "color" of law in making the arrest of Robert Hall and in assaulting him. They were officers of the law who made the arrest. By their own admissions they assaulted Hall in order to protect themselves and to keep their prisoner from escaping. It was their duty under Georgia law to make the arrest effective. Hence, their conduct comes within the statute.

Some of the arguments which have been advanced in support of the contrary conclusion suggest that the question under § 20 is whether Congress has made it a federal offense for a state officer to violate the law of his State. But there is no warrant for treating the question in state law terms. The problem is not whether state law has been violated but whether an inhabitant of a State has been deprived of a federal right by one who acts under "color of any law". He who acts under "color" of law may be a federal officer or a state officer. He may act under "color" of federal law or of state law. The statute does not come into play merely because the federal law or the state law under which the officer purports to act is violated. It is applicable when and only when some one is deprived of a federal right by that action. The fact that it is also a violation of state law does not make it any the less a federal offense punishable as such. Nor does its punishment by federal authority encroach on state authority or relieve the state from its responsibility for punishing state offenses.¹⁰

¹⁰ The petitioners may be guilty of manslaughter or murder under Georgia law and at the same time liable for the federal offense proscribed by § 20. The instances where "an act denounced as a crime by both national and state sovereignties" may be punished by each without violation of the "double jeopardy" provision of the Fifth Amendment are common. *United States v. Lanza*, 260 U. S. 377, 382; *Robert v. Louisiana*, 272 U. S. 312.

We agree that when this statute is applied to the action of state officials, it should be construed so as to respect the proper balance between the States and the federal government in law enforcement. Violation of local law does not necessarily mean that federal rights have been invaded. The fact that a prisoner is assaulted, injured, or even murdered by state officials does not necessarily mean that he is deprived of any right protected or secured by the Constitution or laws of the United States. Cf. *Logan v. United States*, 144 U. S. 263, dealing with assaults by federal officials. The Fourteenth Amendment did not alter the basic relations between the States and the national government. *United States v. Harris*, 106 U. S. 629; *In re Kemmler*, 136 U. S. 436, 448. Our national government is one of delegated powers alone. Under our federal system the administration of criminal justice rests with the States except as Congress, acting within the scope of those delegated powers, has created offenses against the United States. *Jerome v. United States*, 318 U. S. 101, 105. As stated in *United States v. Cruikshank*, 92 U. S. 542, 553-554, "It is no more the duty or within the power of the United States to punish for a conspiracy to falsely imprison or murder within a State, than it would be to punish for false imprisonment or murder itself." And see *United States v. Fox*, 95 U. S. 670, 672. It is only state action of a "particular character" that is prohibited by the Fourteenth Amendment and against which the Amendment authorizes Congress to afford relief. *Civil Rights Cases*, 109 U. S. 3, 11, 13. Thus Congress in § 20 of the Criminal Code did not undertake to make all torts of state officials federal crimes. It brought within § 20 only specified acts done "under color" of law and then only those acts which deprived a person of some right secured by the Constitution or laws of the United States.

This section was before us in *United States v. Classic*, 333 U. S. 299, 326, where we said: "Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of' state law." In that case state election officials were charged with failure to count the votes as cast, alteration of the ballots, and false certification of the number of votes cast for the respective candidates. 313 U. S. pp. 308-309. We stated that those acts of the defendants "were committed in the course of their performance of duties under the Louisiana statute re-

quiring them to count the ballots, to record the result of the count, and to certify the result of the election." *Id.*, pp. 325-326. In the present case, as we have said, the defendants were officers of the law who had made an arrest and who by their own admissions made the assault in order to protect themselves and to keep the prisoner from escaping, i.e. to make the arrest effective. That was a duty they had under Georgia law. *United States v. Classic* is, therefore, indistinguishable from this case so far as "under color of" state law is concerned. In each officers of the State were performing official duties; in each the power which they were authorized to exercise was misused. We cannot draw a distinction between them unless we are to say that § 20 is not applicable to police officers. But the broad sweep of its language leaves no room for such an exception.

It is said that we should abandon the holding of the *Classic* case. It is suggested that the present problem was not clearly in focus in that case and that its holding was ill-advised. A reading of the opinion makes plain that the question was squarely involved and squarely met. It followed the rule announced in *Ex parte Virginia*, 100 U. S. 339, 346, that a state judge who in violation of state law discriminated against negroes in the selection of juries violated the Act of March 1, 1875, 18 Stat. 336. It is true that that statute did not contain the words under "color" of law. But the Court in deciding what was state action within the meaning of the Fourteenth Amendment held that it was immaterial that the state officer exceeded the limits of his authority. "... as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning. Then the State has clothed one of its agents with power to annul or to evade it." 100 U. S. at p. 347. And see *Virginia v. Rives*, 100 U. S. 313, 321. The *Classic* case recognized, without dissent, that the contrary view would defeat the great purpose which § 20 was designed to serve. Reference is made to statements¹¹ of Senator Trumbull in his discussion of § 2 of the Civil Rights Act of 1866, 14 Stat. 27, and to statements of Senator Sherman concerning the 1870 Act¹² as supporting the conclusion that "under color of any law"

¹¹ Cong. Globe, 39th Cong., 1st Sess., p. 1759.

¹² Cong. Globe, 41st Cong., 2d Sess., p. 3663.

was designed to include only action taken by officials pursuant to state law. But those statements in their context are inconclusive on the precise problem involved in the *Classic* case and in the present case. We are not dealing here with a case where an officer not authorized to act nevertheless takes action. Here the state officers were authorized to make an arrest and to take such steps as were necessary to make the arrest effective. They acted without authority only in the sense that they used excessive force in making the arrest effective. It is clear that under "color" of law means under "pretense" of law. Thus acts of officers in the ambit of their personal pursuits are plainly excluded. Acts of officers who undertake to perform their official duties are included whether they hew to the line of their authority or overstep it. If, as suggested, the statute was designed to embrace only action which the State in fact authorized, the words "under color of any law" were hardly apt words to express the idea.

Nor are the decisions under § 33 of the Judicial Code, 28 U. S. C. § 76, in point. That section gives the right of removal to a federal court of any criminal prosecution begun in a state court against a revenue officer of the United States "on account of any act done under color of his office or of any such (revenue) law." The cases under it recognize that it is an "exceptional" procedure which wrests from state courts the power to try offenses against their own laws. *Maryland v. Soper* (No. 1), 270 U. S. 9, 29, 35; *Colorado v. Symes*, 286 U. S. 510, 518. Thus the requirements of the showing necessary for removal are strict. See *Maryland v. Soper* (No. 2), 270 U. S. 36, 42, saying that acts "necessary to make the enforcement effective" are done under "color" of law. Hence those cases do not supply an authoritative guide to the problems under § 20 which seeks to afford protection against officers who possess authority to act and who exercise their powers in such a way as to deprive a person of rights secured to him by the Constitution or laws of the United States. It is one thing to deprive state courts of their authority to enforce their own laws. It is quite another to emasculate an Act of Congress designed to secure individuals their constitutional rights by finely spun distinctions concerning the precise scope of the authority of officers of the law. Cf. *Yick Wo v. Hopkins*, 118 U. S. 356.

But beyond that is the problem of *stare decisis*. The construction given § 20 in the *Classic* case formulated a rule of law which

has become the basis of federal enforcement in this important field. The rule adopted in that case was formulated after mature consideration. It should be good for more than one day only. We do not have here a situation comparable to *Mahnich v. Southern S. S. Co.*, 321 U. S. 96, where we overruled a decision demonstrated to be a sport in the law and inconsistent with what preceded and what followed. The *Classic* case was not the product of hasty action or inadvertence. It was not out of line with the cases which preceded. It was designed to fashion the governing rule of law in this important field. We are not dealing with constitutional interpretations which throughout the history of the Court have wisely remained flexible and subject to frequent re-examination. The meaning which the *Classic* case gave to the phrase "under color of any law" involved only a construction of the statute. Hence if it states a rule undesirable in its consequences, Congress can change it. We add only to the instability and uncertainty of the law if we revise the meaning of § 20 to meet the exigencies of each case coming before us.

Since there must be a new trial, the judgment below is

Reversed.

SUPREME COURT OF THE UNITED STATES.

No. 42.—OCTOBER TERM, 1944.

M. Claude Screws, Frank Edward
Jones and Jim Bob Kelley, Pe-
titioners,

vs.

The United States of America.

On Writ of Certiorari to the
United States Circuit Court
of Appeals for the Fifth Cir-
cuit.

[May 7, 1945.]

Mr. Justice RUTLEDGE, concurring in the result.

For the compelling reason stated at the end of this opinion I concur in reversing the judgment and remanding the cause for further proceedings. But for that reason, my views would require that my vote be cast to affirm the judgment, for the reasons stated by Mr. Justice MURPHY and others I feel forced, in the peculiar situation, to state.

The case comes here established in fact as a gross abuse of authority by state officers. Entrusted with the state's power and using it, without a warrant or with one of only doubtful legality, they invaded a citizen's home, arrested him for alleged theft of a tire, forcibly took him in handcuffs to the courthouse yard, and there beat him to death. Previously they had threatened to kill him, fortified themselves at a near-by bar, and resisted the bartender's importunities not to carry out the arrest. Upon this and other evidence which overwhelmingly supports (140 F. 2d at 665) the verdict, together with instructions adequately covering an officer's right to use force, the jury found the petitioners guilty.

The evidence was conflicting whether the warrant was made out and issued before, or after, the arrest and killing, and if issued beforehand, whether it was valid. The Court of Appeals noted there was evidence "that the alleged warrant of arrest was prepared by the sheriff and was a spurious afterthought" (140 F. 2d at 665), but assumed in the petitioner's favor that a valid warrant had been issued. The dissenting opinion said the victim's shotgun was taken from his home "not in a search of his person but apparently without a lawful warrant." 140 F. 2d at 667.

I.

The verdict has shaped their position here. Their contention hardly disputes the facts on which it rests.² They do not come therefore as faithful state officers, innocent of crime. Justification has been foreclosed. Accordingly, their argument now admits the offense, but insists it was against the state alone, not the nation. So they have made their case in this Court.³

In effect, the position urges it is murder they have done,⁴ not deprivation of constitutional right. Strange as the argument is the reason. It comes to this, that abuse of state power creates immunity to federal power. Because what they did violated the state's laws, the nation cannot reach their conduct.⁵ It may deprive the citizen of his liberty and his life. But whatever state officers may do in abuse of their official capacity can give this government and its courts no concern. This, though the prime object of the Fourteenth Amendment and Section 20 was to secure these fundamental rights against wrongful denial by exercise of the power of the states.

The defense is not pretty. Nor is it valid. By a long course of decision from *Ex parte Virginia*, 100 U. S. 339, to *United States v. Classic*, 313 U. S. 299, it has been rejected.⁶ The ground should not need ploughing again. It was cleared long ago and thoroughly. It has been kept clear, until the ancient doubt, laid

² The crucial dispute of fact was over whether the defendants had used more force than was necessary to restrain the prisoner. The "overwhelming weight of the testimony" (140 F. 2d at 665) was that they used not only all force required to subdue him (if it is assumed he resisted), but continued to beat him for fifteen to thirty minutes after he was knocked to the ground.

³ Cf. Part II *infra*.

⁴ The dissenting judge in the Court of Appeals thought the local offense was not "wilful murder, but rather that it was involuntary manslaughter in the commission of an unlawful act." 140 F. 2d at 666.

⁵ It does not appear that the state has taken any steps toward prosecution for violation of its law.

⁶ Cf. notes 7 and 10. And see *Neal v. Delaware*, 103 U. S. 370, 397; *Civil Rights Cases*, 109 U. S. 3, 15-18; *Chicago, B. & Q. R. R. v. Chicago*, 166 U. S. 226, 233-234; *Raymond v. Chicago Traction Co.*, 207 U. S. 20, 35-37; *Ex parte Young*, 209 U. S. 123; *Home Tel. & Tel. Co. v. Los Angeles*, 227 U. S. 278, 288-289; *Cuyahoga Power Co. v. Akron*, 240 U. S. 462; *Fidelity and Deposit Co. v. Tafoya*, 270 U. S. 426, 434; *Hopkins v. Southern California Telephone Co.*, 275 U. S. 393, 398; *Iowa-Des Moines Bank v. Bennett*, 284 U. S. 239, 245-246; *Nixon v. Condon*, 286 U. S. 73, 89; *Mosher v. City of Phoenix*, 287 U. S. 29; *Sterling v. Constantin*, 287 U. S. 378, 393; *Mooney v. Helchan*, 294 U. S. 103; *Missouri ex rel. Gaines v. Canada*, 305 U. S. 337, 343; *Hague v. C. I. O.*, 307 U. S. 496, 512; *Cochran v. Kansas*, 316 U. S. 255; *Pyle v. Kansas*, 317 U. S. 213.

in the beginning, was resurrected in the last stage of this case. The evidence has nullified any pretense that petitioners acted as individuals, about their personal though nefarious business. They used the power of official place in all that was done. The verdict has foreclosed semblance of any claim that only private matters, not touching official functions, were involved. Yet neither was the state's power, they say.

There is no third category. The Amendment and the legislation were not aimed at rightful state action. Abuse of state power was the target. Limits were put to state authority, and states were forbidden to pass them, by whatever agency.⁷ It is too late now, if there were better reason than exists for doing so, to question that in these matters abuse binds the state and is its act, when done by one to whom it has given power to make the abuse effective to achieve the forbidden ends. Vague ideas of dual federalism,⁸ of ultra vires doctrine imported from private agency,⁹ and of want of finality in official action,¹⁰ do not nullify what

⁷ "The prohibitions of the Fourteenth Amendment are directed to the States. It is these which Congress is empowered to enforce, and to enforce against State action, however put forth, whether that action be executive, legislative, or judicial. . . . Whoever, by virtue of public position under a State government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning." *Ex parte Virginia*, 100 U. S. 339, 346-347.

"Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of' state law." *United States v. Classic*, 313 U. S. 299, 326, citing *Ex parte Virginia*, *supra*, and other authorities.

⁸ Cf. Part III *infra*. "Such enforcement [of the Fourteenth Amendment by Congress] is no invasion of State sovereignty. No law can be, which the people of the States have, by the Constitution of the United States, empowered Congress to enact. This extent of the powers of the general government is overlooked, when it is said, as it has been in this case, that the act of March 1, 1875, [18 Stat., part 3, 336] interferes with State rights." *Ex parte Virginia*, 100 U. S. at 346.

⁹ Cf. *Home Tel. & Tel. Co. v. Los Angeles*, 227 U. S. 278, 287.

¹⁰ Compare *Barney v. City of New York*, 193 U. S. 430, with *Home Tel. & Tel. Co. v. Los Angeles*, 227 U. S. 278, the latter suggesting that the former, "if it conflicted with the doctrine" of *Raymond v. Traction Company*, 297 U. S. 20, and *Ex parte Young*, 209 U. S. 123, "is now so distinguished or qualified as not to be here authoritative or even persuasive." 227 U. S. at 294. See also *Snowden v. Hughes*, 321 U. S. 1, 13; *Isaacs, Jurisdiction of the Lower Federal Courts to Enjoin Unauthorized Action of State Officials*, 40 Harv. L. Rev. 969, 972.

four years of civil strife secured and eighty years have verified. For it was abuse of basic civil and political rights, by states and their officials, that the Amendment and the enforcing legislation were adopted to uproot.

The danger was not merely legislative or judicial. Nor was it threatened only from the state's highest officials. It was abuse by whatever agency the state might invest with its power capable of inflicting the deprivation. In all its flux, time makes some things axiomatic. One has been that state officials who violate their oaths of office and flout the fundamental law are answerable to it when their misconduct brings upon them the penalty it authorizes and Congress has provided.

There could be no clearer violation of the Amendment or the statute. No act could be more final or complete, to denude the victim of rights secured by the Amendment's very terms. These rights so destroyed cannot be restored. Nor could the part played by the state's power in causing their destruction be lessened, though other organs were now to repudiate what was done. The state's law might thus be vindicated. If so, the vindication could only sustain, it could not detract from the federal power. Nor could it restore what the federal power shielded. Neither acquittal nor conviction, though affirmed by the state's highest court, could resurrect what the wrongful use of state power has annihilated. There was in this case abuse of state power, which for the Amendment's great purposes was state action, final in the last degree, depriving the victim of his liberty and his life without due process of law.

If the issues made by the parties themselves were allowed to govern, there would be no need to say more. At various stages petitioners have sought to show that they used no more force than was necessary, that there was no state action, and that the evidence was not sufficient to sustain the verdict and the judgment. These issues, in various formulations, have comprehended their case. All have been resolved against them without error. This should end the matter.

¹¹ Petitioners' objections in law were stated most specifically in the demurrer to the indictment. These grounds also were incorporated in their motion for a directed verdict and their statement of grounds for appeal. The grounds for demurrer maintained that the facts alleged were not sufficient to constitute a federal offense, to fall within or violate the terms of any federal law or statute, or to confer jurisdiction upon the District or other federal court. One ground attacked the indictment for vagueness.

II.

But other and most important issues have been injected and made decisive to reverse the judgment. Petitioners have not denied that they acted "willfully" within the meaning of Section 20 or that they intended to do the acts which took their victim's liberty and life. In the trial court they claimed justification. But they were unable to prove it. The verdict, on overwhelming evidence, has concluded against them their denial of bad purpose and reckless disregard of rights. This is necessarily implied in the finding that excessive force was used. No complaint was made of the charge in any of these respects and no request for additional charges concerning them was offered. Nor, in the application for certiorari or the briefs, have they raised questions of the requisite criminal intent or of unconstitutional vagueness in the statute's definition of the crime. However, these issues have been brought forward, so far as the record discloses, first by the dissenting opinion in the Court of Appeals, then by inquiry at the argument and in the disposition here.

The story would be too long, to trace in more than outline the history of Section 20 and companion provisions, in particular Section 19,¹² with which it must be considered on any suggestion of fatal ambiguity. But this history cannot be ignored, unless we would risk throwing overboard what the nation's greatest internal conflict created and eight decades have confirmed, in protection of individual rights against impairment by the states.

¹² Section 19 of the Criminal Code (18 U. S. C. § 51):

"If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise, on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than \$5,000 and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States." (Emphasis added.)

Section 20 (18 U. S. C. § 52) is as follows:

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitants being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000, or imprisoned not more than one year, or both." (Emphasis added.)

Sections 19 and 20 are twin sections in all respects that concern any question of vagueness in defining the crimes. There are important differences. Section 19 strikes at conspiracies, Section 20 at substantive offenses. The former protects "citizens," the latter "inhabitants." There are, however, no differences in the basic rights guarded. Each protects in a different way the rights and privileges secured to individuals by the Constitution. If one falls for vagueness in pointing to these, the other also must fall for the same reason. If one stands, so must both. It is not one statute therefore which we sustain or nullify. It is two.

The sections have stood for nearly eighty years. Nor has this been without attack for ambiguity. Together the two sections have repelled it. In 1915, one of this Court's greatest judges, speaking for it, summarily disposed of the suggestion that Section 19 is invalid: "It is not open to question that this statute is constitutional. . . . [It] dealt with Federal rights and with all Federal rights, and protected them in the lump. . . ." *United States v. Mosley*, 238 U. S. 383, 386, 387. And in *United States v. Classic*, 313 U. S. 299, the Court with equal vigor reaffirmed the validity of both sections, against dissenting assault for fatal ambiguity in relation to the constitutional rights then in question. These more recent pronouncements but reaffirmed earlier and repeated ones. The history should not require retelling. But old and established freedoms vanish when history is forgotten.

Section 20 originated in the Civil Rights Act of 1866 (14 Stat. 27); Section 19 in the Enforcement Act of 1870 (16 Stat. 141, § 6). Their great original purpose was to strike at discrimination, particularly against Negroes, the one securing civil, the other political rights. But they were not drawn so narrowly. From the beginning Section 19 protected all "citizens," Section 20 "inhabitants."

At first Section 20 secured only rights enumerated in the Civil Rights Act. The first ten years brought it, through broadening changes, to substantially its present form. Only the word "willfully" has been added since then, a change of no materiality, for the statute implied it beforehand.¹³ 35 Stat. 1092. The most important change of the first decade replaced the specific enumera-

¹³ Cf. note 32. President Johnson, vetoing another bill on July 16, 1866, stated that the penalties of the Civil Rights Act "are denounced against the person who willfully violates the law." Cong. Globe, 39th Cong., 1st Sess., 3839.

tion of the Civil Rights Act with the present broad language covering "the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States." R. S. § 5510. This inclusive designation brought Section 20 into conformity with Section 19's original coverage of "any right or privilege secured to him by the Constitution or laws of the United States." Since then, under these generic designations, the two have been literally identical in the scope of the rights they secure. The slight difference in wording cannot be one of substance.¹⁴

Throughout a long and varied course of application the sections have remained unimpaired on the score of vagueness in the crimes they denounce. From 1874 to today they have repelled all attacks purposed to invalidate them. None has succeeded. If time and uniform decision can give stability to statutes, these have acquired it.

Section 20 has not been much used, in direct application, until recently. There were however a number of early decisions.¹⁵ Of late the section has been applied more frequently, in considerable variety of situation, against varied and vigorous attack.¹⁶ In *United States v. Classic*, 313 U. S. at 321, as has been stated, this Court gave it clearest sanction. The opinion expressly repudiated any idea that the section, or Section 19, is vitiated by ambiguity. Moreover, this was done in terms which leave no room to say that the decision was not focused upon that question.¹⁷

¹⁴ For the history of these changes see the authorities cited in the opinion of Mr. Justice DOUGLAS, particularly *Flack, Adoption of the Fourteenth Amendment* (1908).

¹⁵ *United States v. Rhodes*, 27 Fed. Cas. 785, No. 16,151; *United States v. Jackson*, 26 Fed. Cas. 563, No. 15,459; *United States v. Buntin*, 10 Fed. 730; cf. *United States v. Stone*, 188 Fed. 836, a prosecution under Section 37 of the Criminal Code for conspiracy to violate Section 20; cf. also 197 Fed. 489; *United States v. Horton*, 26 Fed. Cas. 375, No. 15,392. The constitutionality of the statute was sustained in the *Rhodes* case in 1866, and in the *Jackson* case in 1874. It was likewise sustained in *In re Turner*, 24 Fed. Cas. 337, No. 14,247 (1867); *Smith v. Mody*, 26 Ind. 299 (1866).

¹⁶ Cf. the authorities cited *infra* at note 25.

¹⁷ Referring to Section 20, the Court said: "The generality of the section, made applicable as it is to deprivations of any constitutional right, does not obscure its meaning or impair its force within the scope of its application, which is restricted by its terms to deprivations which are willfully inflicted by those acting under color of any law, statute and the like." 313 U. S. at 328.

Concerning Section 19, also involved, the Court pointed to the decisions in *Ex parte Yarbrough*, 110 U. S. 651, and *United States v. Mosley*, 238 U. S. 383, cf. note 22, and commented: "the Court found no uncertainty of

True, application to Fourteenth Amendment rights was reserved because the question was raised for the first time in the Government's brief filed here. 313 U. S. at 329. But the statute was sustained in application to a vast range of rights secured by the Constitution, apart from the reserved segment, as the opinion's language and the single reservation itself attest. The ruling, thus broad, cannot have been inadvertent. For it was repeated concerning both sections, broadly, forcefully, and upon citation of long-established authority. And this was done in response to a vigorous dissent which made the most of the point of vagueness.¹⁸ The point was flatly, and deliberately, rejected. The Court cannot have been blinded by other issues to the import of this one.

The *Classic* decision thus cannot be put aside in this case. Nor can it be demonstrated that the rights secured by the Fourteenth Amendment are more numerous or more dubious than the aggregate encompassed by other constitutional provisions. Certainly "the equal protection of the laws," guaranteed by the Amendment, is not more vague and indefinite than many rights protected by other commands.¹⁹ The same thing is true of "the privileges or immunities of citizens of the United States." The Fifth Amendment contains a due process clause as broad in its terms restricting national power as the Fourteenth is of state

ambiguity in the statutory language, obviously devised to protect the citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution, and concerned itself with the question whether the right to participate in choosing a representative is so secured. Such is our function here." 313 U. S. at 321. The opinion stated further: "The suggestion that § 19 . . . is not sufficiently specific to be deemed applicable to primary elections, will hardly bear examination. Section 19 speaks neither of elections nor of primaries. In unambiguous language it protects 'any right or privilege secured by the Constitution,' a phrase which . . . extends to the right of the voter to have his vote counted . . . as well as to numerous other constitutional rights which are wholly unrelated to the choice of a representative in Congress," citing *United States v. Waddell*, 112 U. S. 76; *Logan v. United States*, 144 U. S. 263; *In re Quarles*, 158 U. S. 532; *Motes v. United States*, 178 U. S. 458; *Guinn v. United States*, 238 U. S. 347. Cf. note 18.

¹⁸ The dissenting opinion did not urge that Sections 19 and 20 are wholly void for ambiguity, since it put to one side cases involving discrimination for race or color as "plainly outlawed by the Fourteenth Amendment," as to which it was said, "Since the constitutional mandate is plain, there is no reason why § 19 or § 20 should not be applicable." However it was thought "no such unambiguous mandate" had been given by the constitutional provisions relevant in the *Classic* case. 313 U. S. at 332.

¹⁹ Cf. note 18.

power.²⁰ If Section 20 (with Section 19) is valid in general coverage of other constitutional rights, it cannot be void in the less sweeping application to Fourteenth Amendment rights. If it is valid to assure the rights "plainly and directly" secured by other provisions, it is equally valid to protect those "plainly and directly" secured by the Fourteenth Amendment, including the expressly guaranteed rights not to be deprived of life, liberty or property without due process of law. If in fact there could be any difference among the various rights protected, in view of the history it would be that the section applies more clearly to Fourteenth Amendment rights than to others. Its phrases "are all phrases of large generalities. But they are not generalities of unilluminated vagueness; they are generalities circumscribed by history and appropriate to the largeness of the problems of government with which they were concerned." *Malinski v. United States*, 324 U. S. —, concurring opinion (ship opinion, p. 2).

Historically, the section's function and purpose have been to secure rights given by the Amendment. From the Amendment's adoption until 1874, it was Fourteenth Amendment legislation. Surely when in that year the section was expanded to include other rights these were not dropped out. By giving the citizen additional security in the exercise of his voting and other political rights, which was the section's effect, unless the *Classic* case falls, Congress did not take from him the protection it previously afforded (wholly apart from the prohibition of different penalties).

²⁰ Whether or not the two are coextensive in limitation of federal and state power, respectively, there is certainly a very broad correlation in coverage, and it hardly could be maintained that one is confined by more clear-cut boundaries than the other, although differences in meandering of the boundaries may exist.

²¹ The Court's opinion in the *Classic* case treated this clause of Section 20, cf. note 12, as entirely distinct from the preceding clauses, stating that "the qualification with respect to alienage, color and race, refers only to differences in punishment and not to deprivations of any rights or privileges secured by the Constitution," (emphasis added) as was thought to be evidenced by the grammatical structure of the section and "the necessities of the practical application of its provisions." 313 U. S. 326.

The "pains and penalties" provision is clearly one against discrimination. It does not follow that the qualification as to alienage, color and race does not also refer to the "deprivation of any rights or privileges" clause, though not in an exclusive sense. No authority for the contrary dictum was cited. History here would seem to outweigh doubtful grammar, since, as Section 20 originally appeared in the Civil Rights Act, the qualification as to "color or race" (alienage was added later) seems clearly applicable to its entire prohibition. Although the section is not exclusively a discrimination statute, it would seem clearly, in the light of its history, to include discrimination for alienage, color or race among the prohibited modes of depriving persons of rights or privileges.

against deprivation of such rights on account of race, color or previous condition of servitude, or repeal the prior safeguard of civil rights.

To strike from the statute the rights secured by the Fourteenth Amendment, but at the same time to leave within its coverage the vast area bounded by other constitutional provisions, would contradict both reason and history. No logic but one which nullifies the historic foundations of the Amendment and the section could support such an emasculation. There should be no judicial hack work cutting out some of the great rights the Amendment secures but leaving in others. There can be none excising all protected by the Amendment, but leaving every other given by the Constitution intact under the statute's aegis.

All that has been said of Section 20 applies with equal force to Section 19. It had an earlier more litigious history, firmly establishing its validity.²² It also has received recent applica-

²² *Ex parte Yarbrough*, 110 U. S. 651 (1884); *United States v. Waddell*, 112 U. S. 76 (1884); *Logan v. United States*, 144 U. S. 263 (1892); *In re Quarles and Butler*, 158 U. S. 532 (1895); *Motes v. United States*, 178 U. S. 458 (1900); *United States v. Mosley*, 238 U. S. 383 (1915); *United States v. Morris*, 125 Fed. 322 (1903); *United States v. Lackey*, 99 Fed. 952 (1900), reversed on other grounds, 107 Fed. 114, cert. denied, 181 U. S. 621.

In *United States v. Mosley*, *supra*, as is noted in the text, the Court summarily disposed of the question of validity, stating that the section's constitutionality "is not open to question." 238 U. S. at 386. Cf. note 17. The Court was concerned with implied repeal, but stated: "But § 6 [the antecedent of § 19 in the Enforcement Act] being devoted, as we have said, to the protection of all Federal rights from conspiracies against them. . . . Just as the Fourteenth Amendment . . . was adopted with a view to the protection of the colored race but has been found to be equally important in its application to the rights of all, § 6 had a general scope and used general words that have become the most important. . . . The section now begins with sweeping general words. Those words always were in the act, and the present form gives them a congressional interpretation. Even if that interpretation would not have been held correct in an indictment under § 6, which we are far from intimating, and if we cannot interpret the past by the present, we cannot allow the past so far to affect the present as to deprive citizens of the United States of the general protection which on its face § 19 most reasonably affords." 238 U. S. at 387-388. The dissenting opinion of Mr. Justice Lamar raised no question of the section's validity. It maintained that Congress had not included or had removed protection of voting rights from the section, leaving only civil rights within its coverage. 238 U. S. at 390.

The cases holding that the Fourteenth Amendment and Section 19 do not apply to infractions of constitutional rights involving no state action recognize and often affirm the section's applicability to wrongful action by state officials which infringes them: *United States v. Cruickshank*, 92 U. S. 542 (1876); *Hodges v. United States*, 203 U. S. 1 (1906); *United States v. Powell*, 212 U. S. 564 (1909), see also 151 Fed. 648; *Ex parte Rigg's*, 134 Fed. 404 (1904), dismissed, 199 U. S. 547; *United States v. Sanges*, 48 Fed.

tion,²³ without question for ambiguity except in the *Classic* case, which nevertheless gave it equal sanction with its substantive counterpart.

Separately, and often together in application, Sections 19 and 20 have been woven into our fundamental and statutory law. They have place among our more permanent legal achievements. They have safeguarded many rights and privileges apart from political ones. Among those buttressed, either by direct application or through the general conspiracy statute, Section 37 (18 U. S. C. § 88),²⁴ are the rights to a fair trial, including freedom from sham trials; to be free from arrest and detention by methods constitutionally forbidden and from extortion of property by such methods; from extortion of confessions; from mob action incited or shared by state officers; from failure to furnish police protection on proper occasion and demand; from interference with the free exercise of religion, freedom of the press, freedom of speech and assembly;²⁵ and the necessary import of the

78 (1891), writ of error dismissed, 114 U. S. 310; *Powe v. United States*, 109 F. 2d 147 (1940), cert. denied, 309 U. S. 679. See also *United States v. Hall*, 26 Fed. Cas. 79, No. 15,282 (1871); *United States v. Mall*, 26 Fed. Cas. 1147, No. 15,712 (1871).

²³ Cf. the authorities cited in notes 22 and 25; *United States v. Saylor*, 322 U. S. 325.

²⁴ Sections 19 and 37 clearly overlap in condemning conspiracies to violate constitutional rights. The latter, apparently has been more frequently used, at any rate recently, when civil rather than political rights are involved. It goes without saying that in these cases validity of the application of Section 37, charging conspiracy to violate Section 20, depends upon the latter's validity in application to infraction of the rights charged to have been infringed.

²⁵ Recent examples involving these and other rights are: *Culp v. United States*, 131 F. 2d 93; *Catlette v. United States*, 132 Fed. 902; *United States v. Sutherland*, 37 F. Supp. 344; *United States v. Trierweiler*, 52 F. Supp. 4.

In the *Culp* case the court said: "That this section [§ 20] has not lost any of its vitality since it was originally enacted, is indicated by *United States v. Classic*. . . . It is our opinion that a state law enforcement officer who, under color of state law, willfully and without cause, arrests and imprisons an inhabitant of the United States for the purpose of extortion, deprives him of a right, privilege, and immunity secured and protected by the Constitution of the United States, and commits one of the offenses defined in § 52." 131 F. 2d at 98. Fourteenth Amendment rights were involved also in the *Catlette* case; and in *United States v. Trierweiler*, *supra*, the court said: "The congressional purpose, obviously, is to assure enjoyment of the rights of citizens defined by the Fourteenth Amendment, including the mandate that no state shall deprive any person of life, liberty, or property without due process of law. . . . 52 F. Supp. at 5.

United States v. Buntin, 10 Fed. 730, involved alleged discrimination for race in denying the right to attend public school. In *United States v. Chaplin*, 54 F. Supp. 926, the court ruled that a state judge, acting in his judicial capacity, is immune to prosecution under Section 37 for violating Section 20. But cf. *Ex parte Virginia*, 100 U. S. 939.

decisions is that the right to be free from deprivation of life itself, without due process of law, that is, through abuse of state power by state officials, is as fully protected as other rights so secured.

So much experience cannot be swept aside, or its teaching annulled, without overthrowing a great, and a firmly established, constitutional tradition. Nor has the feared over-throw of uncertainty arisen. Defendants have attacked the sections, or their application,²⁶ often and strenuously. Seldom has complaint been made that they are too vague and uncertain. Objections have centered principally about "state action," including "color of law" and failure by inaction to discharge official duty, cf. *Catlette v. United States*, 132 Fed. 902, and about the strength of federal power to reach particular abuses.²⁶ More rarely they have touched other matters, such as the limiting effect of official privilege²⁷ and, in occasional instances, mens rea.²⁸ In all this wealth of attack accused officials have little used the shield of ambiguity. The omission, like the Court's rejection in the *Classic* case, cannot have been inadvertent. There are valid reasons for it, apart from the old teaching that the matter has been foreclosed.

One is that the generality of the section's terms simply has not worked out to be a hazard of unconstitutional, or even serious, proportions. It has not proved a source of practical difficulty. In no other way can be explained the paucity of the objection's appearance in the wealth of others made. If experience is the life of the law, as has been said, this has been true preeminently in the application of Sections 19 and 20.

Moreover, statutory specificity has two purposes, to give due notice that an act has been made criminal before it is done and to inform one accused of the nature of the offense charged, so that he may adequately prepare and make his defense. More than this certainly the Constitution does not require. Cf. Amend. VI. All difficulty on the latter score vanishes, under Section 20, with the indictment's particularization of the rights infringed and the acts infringing them. If it is not sufficient in either respect, in these as in other cases the motion to quash or one for a

²⁶ These have been the perennial objections, notwithstanding uniform rejection in cases involving interference with both political and civil rights. Cf. the authorities cited in notes 7, 10, 22 and 25.

²⁷ Compare *United States v. Chaplin*, 54 F. Supp. 926 (see note 25 *supra*), with *Ex parte Virginia*, 100 U. S. 339.

²⁸ Cf. *United States v. Buntin*, 10 Fed. 730.

bill of particulars is at the defendant's disposal. The decided cases demonstrate that accused persons have had little or no difficulty to ascertain the rights they have been charged with transgressing or the acts of transgression.²⁹ So it was with the defendants in this case. They were not puzzled to know for what they were indicted, as their proof and their defense upon the law conclusively show. They simply misconceived that the victim had no federal rights and that what they had done was not a crime within the federal power to penalize.³⁰ That kind of error relieves no one from penalty.

In the other aspect of specificity, two answers, apart from experience, suffice. One is that Section 20, and Section 19, are no more general and vague, Fourteenth Amendment rights included, than other criminal statutes commonly enforced against this objection. The Sherman Act is the most obvious illustration.³¹

Furthermore, the argument of vagueness, to warn men of their conduct, ignores the nature of the criminal act itself and the notice necessarily given from this. Section 20 strikes only at abuse of official functions by state officers. It does not reach out for crimes done by men in general. Not murder per se, but murder by state officers in the course of official conduct and done with the aid of state power, is outlawed. These facts, inherent in the crime, give all the warning constitutionally required. For one, so situated, who goes so far in misconduct can have no excuse of innocence or ignorance.

Generally state officials know something of the individual's basic legal rights. If they do not, they should, for they assume that duty when they assume their office. Ignorance of the law is no excuse for men in general. It is less an excuse for men whose special duty is to apply it, and therefore to know and observe it. If their knowledge is not comprehensive, state officials know or should know when they pass the limits of their authority, so far at any rate that their action exceeds honest error of judgment and amounts to abuse of their office and its

²⁹ Cf. authorities cited in notes 7, 10, 22 and 25.

³⁰ Cf. Part III.

³¹ Compare the statutes upheld in *Chaplinsky v. New Hampshire*, 315 U. S. 568, 573-574; *Gorin v. United States*, 312 U. S. 19, 23-24; *Minnesota v. Probate Court*, 309 U. S. 270, 274; *Old Dearborn Co. v. Seagram Corp.*, 299 U. S. 183, 196; *Bandini Petroleum Co. v. Superior Court*, 284 U. S. 8, 18; *Whitney v. California*, 274 U. S. 357, 360, 368-369; *Fox v. Washington*, 236 U. S. 273, 277-278; *United States v. Keitel*, 211 U. S. 370, 393-395.

function. When they enter such a domain in dealing with the citizen's rights, they should do so at their peril, whether that be created by state or federal law. For their sworn oath and their first duty are to uphold the Constitution, then only the law of the state which too is bound by the charter. Since the statute, as I think, condemns only something more than error of judgment, made in honest effort at once to apply and to follow the law, cf. *United States v. Murdock*, 290 U. S. 389, officials who violate it must act in intentional or reckless disregard of individual rights and cannot be ignorant that they do great wrong.³² This being true, they must be taken to act at peril of incurring the penalty placed upon such conduct by the federal law, as they do of that the state imposes.

What has been said supplies all the case requires to be decided on the question of criminal intent. If the criminal act is limited, as I think it must be and the statute intends, to infraction of constitutional rights, including rights secured by the Fourteenth Amendment, by conduct which amounts to abuse of one's official place or reckless disregard of duty, no undue hazard or burden can be placed on state officials honestly seeking to perform the rightful functions of their office. Others are not entitled to greater protection.

But, it is said, a penumbra of rights may be involved, which none can know until decision has been made and infraction may occur before it is had. It seems doubtful this could be true in any case involving the abuse of official function which the statute requires and, if it could, that one guilty of such an abuse should have immunity for that reason. Furthermore, the doubtful character of the right infringed could give reason at the most to invalidate the particular charge, not for outlawing the statute or narrowly restricting its application in advance of compelling occasion.

For there is a body of well-established, clear-cut fundamental rights, including many secured by the Fourteenth Amend-

³² I think all this would be implied if "willfully" had not been added to Section 20 by amendment. The addition but reinforces the original purpose. Cf. note 13 *supra*. Congress in this legislation, hardly can be taken to have sought to punish merely negligent conduct or honest error of judgment by state officials. The aim was at grosser violations of basic rights and the supreme law. Sensible construction of the language, with other considerations, requires this view. The consistent course of the section's application supports it.

ment, to all of which the sections may and do apply, without specific enumeration and without creating hazards of uncertainty for conduct or defense. Others will enter that category. So far, at the least when they have done so, the sections should stand without question of their validity. Beyond this, the character of the act proscribed and the intent it necessarily implies would seem to afford would-be violators all of notice the law requires, that they act at peril of the penalty it places on their misconduct.

We have in this case no instance of mere error in judgment made in good faith. It would be time enough to reverse and remand a conviction obtained without instructions along these lines, if such a case should arise. Actually the substance of such instruction was given in the wholly adequate charge concerning the officer's right to use force, though not to excess. When, as here, a state official abuses his place consciously or grossly in abnegation of its rightful obligation, and thereby tramples underfoot the established constitutional rights of men or citizens, his conviction should stand when he has had the fair trial and full defense the petitioners have been given in this case.

III.

Two implicit but highly important considerations must be noticed more definitely. One is the fear grounded in concern for possible maladjustment of federal-state relations if this and like convictions are sustained. Enough has been said to show that the fear is not well grounded. The same fear was expressed, by some in exaggerated and highly emotional terms, when Section 2 of the Civil Rights Act, the antecedent of Section 20, was under debate in Congress.³³ The history of the legislation's enforcement gives it no support. The fear was not realized in later experience. Eighty years should be enough to remove any remaining vestige. The volume of prosecutions and convictions has been small, in view of the importance of the subject matter and the length of time the statutes have been in force. There are reasons for this, apart from self-restraint of federal prosecuting officials.

³³ See Flack, *Adoption of the Fourteenth Amendment* (1908) 22-28; Cong. Globe, 39th Cong., 1st Sess., 474-607, 1151 ff.

Senator Davis of Kentucky said that "this short bill repeals all the penal laws of the States. . . . The cases . . . the . . . bill would bring up every day in the United States would be as numerous as the passing minutes. The result would be to utterly subvert our Government. . . ." Cong. Globe, 39th Cong., 1st Sess., 598.

One lies in the character of the criminal act and the intent which must be proved. A strong case must be made to show abuse of official function, and therefore to secure indictment or conviction. Trial must be "by an impartial jury of the State and the district wherein the crime shall have been committed." Const., Amend. VI; cf. Art. III, § 2. For all practical purposes this means within the state of which the accused is an officer. Citizens of the state have not been, and will not be, ready to indict or convict their local officers on groundless charges or in doubtful cases. The sections can be applied effectively only when twelve of them concur in a verdict which accords with the prosecuting official's belief that the accused has violated another's fundamental rights. A federal official therefore faces both a delicate and a difficult task when he undertakes to charge and try a state officer under the terms of Sections 19 and 20. The restraint which has been shown is as much enforced by these limitations as it has been voluntary.

These are the reasons why prosecution has not been frequent, has been brought only in cases of gross abuse, and therefore has produced no grave or substantial problem of interference by federal authority in state affairs. But if the problem in this phase of the case were more serious than it has been or is likely to be, the result legally could not be to give state officials immunity from the obligations and liabilities the Amendment and its supporting legislation have imposed. For the verdict of the struggle which brought about adoption of the Amendment was to the contrary.

Lying beneath all the surface arguments is a deeper implication, which comprehends them. It goes to federal power. It is that Congress could not in so many words denounce as a federal crime the intentional and wrongful taking of an individual's life or liberty by a state official acting in abuse of his official function and applying to the deed all the power of his office. This is the ultimate purport of the notions that state action is not involved and that the crime is against the state alone, not the nation. It is reflected also in the idea that the statute can protect the victim in his many procedural rights encompassed in the right to a fair trial before condemnation, but cannot protect him in the right which comprehends all others, the right to life itself.

Suffice it to say that if these ideas did not pass from the American scene once and for all, as I think they did, upon adoption

of the Amendment without more, they have long since done so. Violation of state law there may be. But from this no immunity to federal authority can arise where any part of the Constitution has made it supreme. To the Constitution state officials and the states themselves owe first obligation. The federal power lacks no strength to reach their malfeasance in office when it infringes constitutional rights. If that is a great power, it is one generated by the Constitution and the Amendments, to which the states have assented and their officials owe prime allegiance.³⁴

The right not to be deprived of life or liberty by a state officer who takes it by abuse of his office and its power is such a right. To secure these rights is not beyond federal power. This Sections 19 and 20 have done, in a manner history long since has validated.

Accordingly, I would affirm the judgment.

My convictions are as I have stated them. Were it possible for me to adhere to them in my vote, and for the Court at the same time to dispose of the cause, I would act accordingly. The Court, however, is divided in opinion. If each member accords his vote to his belief, the case cannot have disposition. Stalemate should not prevail for any reason, however compelling, in a criminal cause or, if avoidable, in any other. My views concerning appropriate disposition are more nearly in accord with those stated by Mr. Justice DOUGLAS, in which three other members of the Court concur, than they are with the views of my dissenting brethren who favor outright reversal. Accordingly, in order that disposition may be made of this case, my vote has been cast to reverse the decision of the Court of Appeals and remand the cause to the District Court for further proceedings in accordance with the disposition required by the opinion of Mr. Justice DOUGLAS.

34
cf. note 8.

SUPREME COURT OF THE UNITED STATES.

No. 42.—OCTOBER TERM, 1944.

M. Claude Screws, Frank Edward
Jones and Jim Bob Kelley, Pe-
titioners,

vs.

The United States of America.

On Writ of Certiorari to the
United States Circuit Court
of Appeals for the Fifth
Circuit.

[May 7, 1945.]

MR. JUSTICE MURPHY, dissenting.

I dissent. Robert Hall, a Negro citizen, has been deprived not only of the right to be tried by a court rather than by ordeal. He has been deprived of the right to life itself. That right belonged to him not because he was a Negro or a member of any particular race or creed. That right was his because he was an American citizen, because he was a human being. As such, he was entitled to all the respect and fair treatment that befits the dignity of man, a dignity that is recognized and guaranteed by the Constitution. Yet not even the semblance of due process has been accorded him. He has been cruelly and unjustifiably beaten to death by local police officers acting under color of authority derived from the state. It is difficult to believe that such an obvious and necessary right is indefinitely guaranteed by the Constitution or is foreign to the knowledge of local police officers so as to cast any reasonable doubt on the conviction under Section 20 of the Criminal Code of the perpetrators of this "shocking and revolting episode in law enforcement."

The Constitution and Section 20 must be read together inasmuch as Section 20 refers in part to certain provisions of the Constitution. Section 20 punishes anyone, acting under color of any law, who willfully deprives any person of any right, privilege or immunity secured or protected by the Constitution or laws of the United States. The pertinent part of the Constitution in this instance is Section 1 of the Fourteenth Amendment, which firmly and unmistakably provides that no state shall deprive any person of life without due process of law. Translated in light of this

specific provision of the Fourteenth Amendment, Section 20 thus punishes anyone, acting under color of state law, who willfully deprives any person of life without due process of law. Such is the clear statutory provision upon which this conviction must stand or fall.

A grave constitutional issue, however, is said to lurk in the alleged indefiniteness of the crime outlawed by Section 20. The rights, privileges and immunities secured or protected by the Constitution or laws of the United States are claimed to be so uncertain and flexible, dependent upon changeable legal concepts, as to leave a state official confused and ignorant as to what actions of his might run afoul of the law. The statute, it is concluded, must be set aside for vagueness.

It is axiomatic, of course, that a criminal statute must give a clear and unmistakable warning as to the acts which will subject one to criminal punishment. And courts are without power to supply that which Congress has left vague. But this salutary principle does not mean that if a statute is vague as to certain criminal acts but definite as to others the entire statute must fall. Nor does it mean that in the first case involving the statute to come before us we must delineate all the prohibited acts that are obscure and all those that are explicit.

Thus it is idle to speculate on other situations that might involve Section 20 which are not now before us. We are unconcerned here with state officials who have coerced a confession from a prisoner, denied counsel to a defendant or made a faulty tax assessment. Whatever doubt may exist in those or in other situations as to whether the state officials could reasonably anticipate and recognize the relevant constitutional rights is immaterial in this case. Our attention here is directed solely to three state officials who, in the course of their official duties, have unjustifiably beaten and crushed the body of a human being, thereby depriving him of trial by jury and of life itself. The only pertinent inquiry is whether Section 20, by its reference to the Fourteenth Amendment guarantee that no state shall deprive any person of life without due process of law, gives fair warning to state officials that they are criminally liable for violating this right to life.

Common sense gives an affirmative answer to that problem. The reference in Section 20 to rights protected by the Constitu-

tion is manifest and simple. At the same time, the right not to be deprived of life without due process of law is distinctly and lucidly protected by the Fourteenth Amendment. There is nothing vague or indefinite in these references to this most basic of all human rights. Knowledge of a comprehensive law library is unnecessary for officers of the law to know that the right to murder individuals in the course of their duties is unrecognized in this nation. No appreciable amount of intelligence or conjecture on the part of the lowliest state official is needed for him to realize that fact; nor should it surprise him to find out that the Constitution protects persons from his reckless disregard of human life and that statutes punish him therefor. To subject a state official to punishment under Section 20 for such acts is not to penalize him without fair and definite warning. Rather it is to uphold elementary standards of decency and to make American principles of law and our constitutional guarantees mean something more than pious rhetoric.

Under these circumstances it is unnecessary to send this case back for a further trial on the assumption that the jury was not charged on the matter of the willfulness of the state officials, an issue that was not raised below or before us. The evidence is more than convincing that the officials willfully, or at least with wanton disregard of the consequences, deprived Robert Hall of his life without due process of law. A new trial could hardly make that fact more evident; the failure to charge the jury on willfulness was at most an inconsequential error. Moreover, the presence or absence of willfulness fails to decide the constitutional issue raised before us. Section 20 is very definite and certain in its reference to the right to life as spelled out in the Fourteenth Amendment quite apart from the state of mind of the state officials. A finding of willfulness can add nothing to the clarity of that reference.

It is an illusion to say that the real issue in this case is the alleged failure of Section 20 fully to warn the state officials that their actions were illegal. The Constitution, Section 20 and their own consciences told them that. They knew that they lacked any mandate or authority to take human life unnecessarily or without due process of law in the course of their duties. They knew that their excessive and abusive use of authority would only subvert the ends of justice. The significant question, rather, is whether law enforcement officers and those entrusted with authority shall

be allowed to violate with impunity the clear constitutional rights of the inarticulate and the friendless. Too often unpopular minorities, such as Negroes, are unable to find effective refuge from the cruelties of bigoted and ruthless authority. States are undoubtedly capable of punishing their officers who commit such outrages. But where, as here, the states are unwilling for some reason to prosecute such crimes the federal government must step in unless constitutional guarantees are to become atrophied.

This necessary intervention, however, will be futile if courts disregard reality and misuse the principle that criminal statutes must be clear and definite. Here state officers have violated with reckless abandon a plain constitutional right of an American citizen. The two courts below have found and the record demonstrates that the trial was fair and the evidence of guilt clear. And Section 20 unmistakably outlaws such actions by state officers. We should therefore affirm the judgment.

SUPREME COURT OF THE UNITED STATES.

No. 42.—OCTOBER TERM, 1944.

M. Claude Serews, Frank Edward
Jones and Jim Bob Kelley, Pe-
titioners,

vs.

The United States of America.

On Writ of Certiorari to the
United States Circuit Court
of Appeals for the Fifth Cir-
cuit.

[May 7, 1945.]

Mr. Justice ROBERTS, Mr. Justice FRANKFURTER and

Mr. Justice JACKSON, dissenting.

Three law enforcement officers of Georgia, a county sheriff, a special deputy and a city policeman, arrested a young Negro charged with a local crime, that of stealing a tire. While he was in their custody and handcuffed, they so severely beat the lad that he died. This brutal misconduct rendered these lawless law officers guilty of manslaughter, if not of murder, under Georgia law. Instead of leaving this misdeed to vindication by Georgia law, the United States deflected Georgia's responsibility by instituting a federal prosecution. But this was a criminal homicide only under Georgia law. The United States could not prosecute the petitioners for taking life. Instead, a prosecution was brought, and the conviction now under review was obtained, under § 20 of the Criminal Code, 18 U. S. C. § 52. Section 20, originating in § 2 of the Civil Rights Act of April 9, 1866, 14 Stat. 27, was put on the statute books on May 31, 1870, but for all practical purposes it has remained a dead letter all these years. This section provides that "Whoever, under color of any law, statute, ordinance, regulation or custom, willfully subjects . . . any inhabitant of any State . . . to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States . . . shall be fined not more than one thousand dollars or imprisoned not more than one year, or both." Under § 37 of the Criminal Code, 18 U. S. C. § 88, a conspiracy to commit any federal offense is punishable by imprisonment for two years. The theory of this prosecution is that one charged with crime is entitled to due process of law and that that includes the right to an orderly trial of which the petitioners deprived the Negro.

Of course the petitioners are punishable. The only issue is whether Georgia alone has the power and duty to punish, or whether this patently local crime can be made the basis of a federal prosecution. The practical question is whether the States should be relieved from responsibility to bring their law officers to book for homicide, by allowing prosecutions in the federal courts for a relatively minor offense carrying a short sentence. The legal question is whether, for the purpose of accomplishing this relaxation of State responsibility, hitherto settled principles for the protection of civil liberties shall be bent and tortured.

I.

By the Thirteenth Amendment slavery was abolished. In order to secure equality of treatment for the emancipated, the Fourteenth Amendment was adopted at the same time. To be sure, the latter Amendment has not been confined to instances of discrimination because of race or color. Undoubtedly, however, the necessary protection of the new freedmen was the most powerful impulse behind the Fourteenth Amendment. The vital part of that Amendment, Section 1, reads as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

By itself, this Amendment is merely an instrument for striking down action by the States in defiance of it. It does not create rights and obligations actively enforceable by federal law. However, like all rights secured by the Constitution of the United States, those created by the Fourteenth Amendment could be enforced by appropriate federal legislation. The general power of Congress to pass measures effectuating the Constitution is given by Art. I, § 8, cl. 18—the Necessary and Proper Clause. In order to indicate the importance of enforcing the guarantees of Amendment XIV, its fifth section specifically provides: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

Accordingly, Congress passed various measures for its enforce-

ment. It is familiar history that much of this legislation was born of that vengeful spirit which to no small degree envenomed the Reconstruction era. Legislative respect for constitutional limitations was not at its height and Congress passed laws clearly unconstitutional. See *Civil Rights Cases*, 109 U. S. 3. One of the laws of this period was the Act of May 31, 1870, 16 Stat. 140. In its present form, as § 20, it is now here for the first time on full consideration as to its meaning and its constitutionality, unembarrassed by preoccupation both on the part of counsel and Court with the more compelling issue of the power of Congress to control State procedure for the election of federal officers. If § 20 were read as other legislation is read, by giving it the meaning which its language in its proper setting naturally and spontaneously yields, it is difficult to believe that there would be real doubt about the proper construction. The unstrained significance of the words chosen by Congress, the disclosed purpose for which they were chosen and to which they were limited, the always relevant implications of our federal system especially in the distribution of power and responsibility for the enforcement of the criminal law as between the States and the National Government, all converge to make plain what conduct Congress outlawed by the Act of 1870 and what impliedly it did not.

The Fourteenth Amendment prohibited a State from so acting as to deprive persons of new federal rights defined by it. Section 5 of the Amendment specifically authorized enabling legislation to enforce that prohibition. Since a State can act only through its officers Congress provided for the prosecution of any officer who deprives others of their guaranteed rights and denied such an officer the right to defend by claiming the authority of the State for his action. In short, Congress said that no State can empower an officer to commit acts which the Constitution forbade the State from authorizing, whether such unauthorized command be given for the State by its legislative or judicial voice, or by a custom contradicting the written law. See *Nashville, C. & St. L. Ry. v. Browning*, 310 U. S. 362, 369. The present prosecution is not based on an officer's claim that that for which the United States seeks his punishment was commanded or authorized by the law of his State. On the contrary, the present prosecution is based on the theory that Congress made it a federal offense for a State officer to violate the explicit law of his State. We are asked to

construe legislation which was intended to effectuate prohibitions against States for defiance of the Constitution, to be equally applicable where a State duly obeys the Constitution, but an officer flouts State law and is unquestionably subject to punishment by the State for his disobedience.

So to read § 20 disregards not merely the normal function of language to express ideas appropriately. It fails not merely to leave to the States the province of local crime enforcement, that the proper balance of political forces in our federalism requires. It does both, heedless of the Congressional purpose, clearly evinced even during the feverish Reconstruction days, to leave undisturbed the power and the duty of the States to enforce their criminal law by restricting federal authority to the punishment only of those persons who violate federal rights under claim of State authority and not by exerting federal authority against offenders of State authority. Such a distortion of federal power devised against recalcitrant State authority never entered the minds of the proponents of the legislation.

Indeed, we have the weightiest evidence to indicate that they rejected that which now, after seventy-five years, the Government urges. Section 20 of the Criminal Code derived from § 2 of the Civil Rights Act of 1866, 14 Stat. 27. During the debate on this section, Senator Trumbull, the Chairman of the Senate Judiciary Committee, answered fears concerning the loose inclusiveness of the phrase "color of law." In particular, opponents of the Act were troubled lest it would make criminals of State judges and officials for carrying out their legal duties. Senator Trumbull agreed that they would be guilty if they consciously helped to enforce discriminatory State legislation. Federal law, replied Senator Trumbull, was directed against those, and only against those, who were not punishable by State law precisely because they acted in obedience to unconstitutional State law and by State law justified their action. Said Senator Trumbull, "If an offense is committed against a colored person simply because he is colored in a State where the law affords him the same protection as if he were white, this act neither has nor was intended to have anything to do with his case, because he has adequate remedies in the State courts; but if he is discriminated against under color of State laws because he is colored, then it becomes necessary to interfere for his protection." Cong. Globe, 39th Cong., 1st Sess., p. 1758.

And this language applies equally to § 17 of the Act of May 31, 1870, 16 Stat. 140, 144, (now § 20 of the Criminal Code) which reenacted the Civil Rights Act.

That this legislation was confined to attempted deprivations of federal rights by State law and was not extended to breaches of State law by its officials, is likewise confirmed by observations of Senator Sherman, another leading Reconstruction statesman. When asked about the applicability of the 1870 Act to a Negro's right to vote when State law provided for that right, Senator Sherman replied, "That is not the case with which we are dealing. I intend to propose an amendment to present a question of that kind. This bill only proposes to deal with offenses committed by officers or persons under color of existing State law, under color of existing State constitutions. No man could be convicted under this bill reported by the Judiciary Committee unless the denial of the right to vote was done under color or pretense of State regulation. The whole bill shows that. My honorable friend from California has not read this bill with his usual care if he does not see that that runs through the whole of the provisions of the first and second sections of the bill which simply punish officers as well as persons for discrimination under color of State laws or constitutions; and so it provides all the way through." Cong. Globe, 41st Cong., 2d Sess., p. 3663. The debates in Congress are barren of any indication that the supporters of the legislation now before us had the remotest notion of authorizing the National Government to prosecute State officers for conduct which their State had made a State offense where the settled custom of the State did not run counter to formulated law.

Were it otherwise it would indeed be surprising. It was natural to give the shelter of the Constitution to those basic human rights for the vindication of which the successful conduct of the Civil War was the end of a long process. And the extension of federal authority so as to guard against evasion by any State of these newly created federal rights was an obvious corollary. But to attribute to Congress the making overnight of a revolutionary change in the balance of the political relations between the National Government and the States without reason, is a very different thing. And to have provided for the National Government to take over the administration of criminal justice from the States to the extent of making every lawless act of the policeman on the beat or in the station house, whether by way of third degree or the illegal ran-

sacking for evidence in a man's house. (see *Gould v. United States*, 255 U. S. 298; *Byars v. United States*, 273 U. S. 28; *Brown v. Mississippi*, 297 U. S. 278; *Chambers v. Florida*, 309 U. S. 227), a federal offense, would have constituted a revolutionary break with the past overnight. The desire for such a dislocation in our federal system plainly was not contemplated by the Lyman Trumbulls and the John Shermans, and not even by the Thaddeus Stevens.

Regard for maintaining the delicate balance "between the judicial tribunals of the Union and of the States" in the enforcement of the criminal law has informed this Court, as it has influenced Congress, "in recognition of the fact that the public good requires that those relations be not disturbed by unnecessary conflict between courts equally bound to guard and protect rights secured by the Constitution." *Ex parte Royall*, 117 U. S. 241, 251. Observance of this basic principle under our system of Government has led this Court to abstain, even under more tempting circumstances than those now here, from needless extension of federal criminal authority into matters that normally are of state concern and for which the States had best be charged with responsibility.

We have reference to § 33 of the Judicial Code, as amended, 28 U. S. C. § 76. That provision gives the right of removal to a federal court of any criminal prosecution begun in a State court against a revenue officer of the United States "on account of any act done under color of his office or of any such [revenue] law." Where a state prosecution for manslaughter is resisted by the claim that what was done was justifiably done by a United States officer one would suppose that this Court would be alert to construe very broadly "under color of his office or of any such law" in order to avoid the hazards of trial, whether through conscious or unconscious discrimination or hostility, of a United States officer accused of homicide and to assure him a trial in a presumably more impartial federal court. But this Court long ago indicated that misuse of federal authority does not come within the statute's protection. *Tennessee v. Davis*, 160 U. S. 257, 261-262. More recently, this Court in a series of cases, unanimously insisted that a petition for removal must show with particularity that the offense for which the State is prosecuting resulted from a discharge of federal duty. "It must appear that the prosecution of him, for whatever offense, has arisen out of the acts done by him under color of federal authority and in enforcement of federal law.

and he must by direct averment exclude the possibility that it was based on acts or conduct of his not justified by his federal duty

The defense he is to make is that of his immunity of punishment by the State, because what he did was justified by his duty under the federal law, and because he did nothing else on which the prosecution could be based."

Maryland v. Soper (No. 1), 270 U. S. 9, 33. And see *Maryland v. Soper* (No. 2), 270 U. S. 36; *Maryland v. Soper* (No. 3), 270 U. S. 44; *Colorado v. Symes*, 236 U. S. 510.

To the suggestion that such a limited construction of the removal statute enacted for the protection of the United States officers would restrict its effectiveness, the answer was that if Congress chose to afford even greater protection and to withdraw from the State the right and duty to enforce their criminal law in their own courts, it should express its desire more specifically. *Maryland v. Soper* (No. 2); 270 U. S. 36, 42, 44. That answer should be binding in the situation now before us.

The reasons which led this Court to give such a restricted scope to the removal statute are even more compelling as to § 20. The matter concerns policies inherent in our federal system and the undesirable consequences of federal prosecution for crimes which are obviously and predominantly State crimes no matter how much sophisticated argumentation may give them the appearance of federal crimes. Congress has not expressed a contrary purpose, either by the language of its legislation or by anything appearing in the environment out of which its language came. The practice of government for seventy-five years likewise speaks against it. Nor is there a body of judicial opinion which bids us find in the unbridled excess of a State officer, constituting a crime under his State law, action taken "under color of law" which federal law forbids.

Only two reported cases considered § 20 before *United States v. Classic*, 313 U. S. 299. In *United States v. Buntin*, 10 Fed. 730, a teacher, in reliance on a State statute, refused admittance to a colored child, while in *United States v. Stone*, 188 Fed. 836, election supervisors who acted under a Maryland election law were held to act "under color of law". In neither case was there a patent violation of State law but rather an attempt at justification under State law. *United States v. Classic*, *supra*, is the only decision that looks the other way. In that case primary election officials were held to have acted "under color of law" even though

the acts complained of as a federal offense were likewise condemned by Louisiana law. The truth of the matter is that the focus of attention in the *Classic* case was not our present problem, but was the relation of primaries to the protection of the electoral process under the United States Constitution. The views in the *Classic* case thus reached ought not to stand in the way of a decision on the merits of a question which has now for the first time been fully explored and its implications for the workings of our federal system have been adequately revealed.

It was assumed quite needlessly in the *Classic* case that the scope of § 20 was coextensive with the Fourteenth Amendment. Because the weight of the case was elsewhere, we did not pursue the difference between the power granted to Congress by that Amendment to bar "any State" from depriving persons of the newly created constitutional rights and the limited extent to which Congress exercised that power, in what is now § 20, by making it an offense for one acting "under color of any law" to deprive another of such constitutional rights. It may well be that Congress could, within the bounds of the Fourteenth Amendment, treat action taken by a State official even though in defiance of State law and not condoned by ultimate State authority as the action of "a State". It has never been satisfactorily explained how a State can be said to deprive a person of liberty or property without due process of law when the foundation of the claim is that a minor official has disobeyed the authentic command of his State. See *Raymond v. Chicago Traction Co.*, 207 U. S. 20, 40, 41. Although action taken under such circumstances has been deemed to be deprivation by a "State" of rights guaranteed by the Fourteenth Amendment for purposes of federal jurisdiction, the doctrine has had a fluctuating and dubious history. Compare *Barney v. City of New York*, 193 U. S. 430, with *Raymond v. Chicago Traction Co.*, *supra*; *Memphis v. Cumberland Telephone Co.*, 218 U. S. 624, with *Home Tel. & Tel. Co. v. Los Angeles*, 227 U. S. 278. *Barney v. City of New York*, *supra*, which ruled otherwise, although questioned, has never been overruled. See, for instance, *Iowa-Des Moines Bank v. Bennett*, 284 U. S. 239, 246-247, and *Snowden v. Hughes*, 321 U. S. 1, 13.¹

¹ *Iowa-Des Moines Bank v. Bennett*, *supra*, illustrates the situation where there can be no doubt that the action complained of was the action of a State. That case came here from a State court as the ultimate voice of

But assuming unreservedly that conduct such as that now before us, perpetrated by State officers in flagrant defiance of State law, may be attributed to the State under the Fourteenth Amendment, this does not make it action under "color of any law". Section 20 is much narrower than the power of Congress. Even though Congress might have swept within the federal criminal law any action that could be deemed within the vast reach of the Fourteenth Amendment, Congress did not do so. The presuppositions of our federal system, the pronouncements of the statesmen who shaped this legislation, and the normal meaning of language powerfully counsel against attributing to Congress intrusion into the sphere of criminal law traditionally and naturally reserved for the States alone. When due account is taken of the considerations that have heretofore controlled the political and legal relations between the States and the National Government, there is not the slightest warrant in the reason of things for torturing language plainly designed for nullifying a claim of acting under a State law that conflicts with the Constitution so as to apply to situations where State law is in conformity with the Constitution and local misconduct is in undisputed violation of that State law. In the absence of clear direction by Congress we should leave to the States the enforcement of their criminal law, and not relieve States of the responsibility for vindicating wrongdoing that is essentially local or weaken the habits of local law enforcement by tempting reliance on federal authority for an occasional unpleasant task of local enforcement.

II.

In our view then, the Government's attempt to bring an unjustifiable homicide by local Georgia peace officers within the defined limits of the federal Criminal Code cannot clear the first hurdle of the legal requirement that that which these officers are charged with doing must be done under color of Georgia law.

Since the majority of the Court do not share this conviction that the action of the Georgia peace officers was not perpetrated under color of law, we, too, must consider the constitutionality of § 20. All but two members of the Court apparently agree that

State law authenticating the alleged illegal action as the law of the State. Cases which *Lane v. Wilson*, 307 U. S. 268, is an illustration are also to be differentiated. In that case election officials discriminated illegally against Negroes not in defiance of a State statute but under its authority.

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insofar as § 20 purports to subject men to punishment for crime it fails to define what conduct is made criminal. As misuse of the criminal machinery is one of the most potent and familiar instruments of arbitrary government, proper regard for the rational requirement of definiteness in criminal statutes is basic to civil liberties. As such it is included in the constitutional guaranty of due process of law. But four members of the Court are of the opinion that this plain constitutional principle of definiteness in criminal statutes may be replaced by an elaborate scheme of constitutional exegesis whereby that which Congress has not defined the courts can define from time to time, with varying and conflicting definiteness in the decisions, and that, in any event, an undefined range of conduct may become sufficiently definite if only such undefined conduct is committed "willfully".

In subjecting to punishment "deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States", § 20 on its face makes criminal deprivation of the whole range of undefined appeals to the Constitution. Such is the true scope of the forbidden conduct. Its domain is unbounded and therefore too indefinite. Criminal statutes must have more or less specific contours. This has none.

To suggest that the "right" deprivation of which is made criminal by § 20 "has been made specific either by the express terms of the Constitution or by decisions interpreting it" hardly adds definiteness beyond that of the statute's own terms. What provision is to be deemed "specific" "by the express terms of the Constitution" and what not "specific"? If the First Amendment safeguarding free speech be a "specific" provision what about the Fourth? "All unreasonable searches and seizures are absolutely forbidden by the Fourth Amendment." *Nathanson v. United States*, 290 U. S. 41, 46. Surely each is among the "rights, privileges, or immunities secured or protected by the Constitution", deprivation of which is a crime under § 20. In any event, what are the criteria by which to determine what express provisions of the Constitution are "specific" and what provisions are not "specific"? And if the terms of § 20 in and of themselves are lacking in sufficient definiteness for a criminal statute, restriction within the framework of "decisions interpreting" the Constitution cannot show the necessary definiteness. The illustrations

given in the Court's opinion underline the inescapable vagueness due to the doubts and fluctuating character of decisions interpreting the Constitution.

This intrinsic vagueness of the terms of § 20 surely cannot be removed by making the statute applicable only where the defendant has the "requisite bad purpose". Does that not amount to saying that the black heart of the defendant enables him to know what are the constitutional rights deprivation of which the statute forbids, although we as judges are not able to define their classes or their limits, or, at least, are not prepared to state what they are unless it be to say that § 20 protects whatever rights the Constitution protects?

Under the construction proposed for § 20, in order for a jury to convict, it would be necessary "to find that petitioners had the purpose to deprive the prisoner of a constitutional right, e.g. the right to be tried by a court rather than by ordeal". There is no question that Congress could provide for a penalty against deprivation by state officials "acting under color of any law" of "the right to be tried by a court rather than by ordeal". But we cannot restrict the problem raised by § 20 to the validity of penalizing a deprivation of this specific constitutional right. We are dealing with the reach of the statute, for Congress has not particularized as the Court now particularizes. Such transforming interpolation is not interpretation. And that is recognized by the sentence just quoted, namely, that the jury in order to convict under § 20 must find that an accused "had the purpose to deprive" another "of a constitutional right", giving *this* specific constitutional right as "e.g." by way of illustration. Hence a judge would have to define to the jury what the constitutional rights are deprivation of which is prohibited by § 20. If that is a legal question as to which the jury must take instruction from the court, at least the trial court must be possessed of the means of knowing with sufficient definiteness the range of "rights" that are "constitutional". The court can hardly be helped out in determining that legal question by leaving it to the jury to decide whether the act was "willfully" committed.

It is not conceivable that this Court would find that a statute cast in the following terms would satisfy the constitutional requirement for definiteness:

"Whoever WILLFULLY commits any act which the Supreme Court of the United States shall find to be a deprivation of any right, privilege, or immunity secured or protected by the Constitution shall be imprisoned not more than, etc."

If such a statute would fall for uncertainty, wherein does § 20 as construed by the Court differ and how can it survive?

It was settled early in our history that prosecutions in the federal courts could not be founded on any undefined body of so-called common law. *United States v. Hudson*, 7 Cranch 32; *United States v. Gooding*, 12 Wheat. 460. Federal prosecutions must be founded on delineation by Congress of what is made criminal. To base federal prosecutions on the shifting and indeterminate decisions of courts is to sanction prosecutions for crimes based on definitions made by courts. This is tantamount to creating a new body of federal criminal common law.

It cannot be too often emphasized that as basic a difference as any between our notions of law and those of legal systems not founded on Anglo-American conceptions of liberty is that crimes must be defined by the legislature. The legislature does not meet this requirement by issuing a blank check to courts for their retrospective finding that some act done in the past comes within the contingencies and conflicts that inhere in ascertaining the content of the Fourteenth Amendment by "the gradual process of judicial inclusion and exclusion." *Davidson v. New Orleans*, 96 U. S. 97, 104. Therefore, to subject to criminal punishment conduct that the court may eventually find to have been within the scope or the limitations of a legal doctrine underlying a decision is to satisfy the vital requirement for definiteness through an appearance of definiteness in the process of constitutional adjudication which every student of law knows not to comport with actuality. What the Constitution requires is a definiteness defined by the legislature, not one argumentatively spelled out through the judicial process which, precisely because it is a process, can not avoid incompleteness. A definiteness which requires so much subtlety to expound is hardly definite.

It is as novel as it is an inadmissible principle that a criminal statute of indefinite scope can be rendered definite by requiring that a person "willfully" commit what Congress has not defined but which, if Congress had defined, could constitutionally be outlawed. Of course Congress can prohibit the deprivation of enumerated constitutional rights. But if Congress makes it a crime to

deprive another of any right protected by the Constitution—and that is what § 20 does—this Court cannot escape facing decisions as to what constitutional rights are covered by § 20 by saying that in any event, whatever they are, they must be taken away “willfully”. It has not been explained how all the considerations of unconstitutional vagueness which are laid bare in the early part of the Court’s opinion evaporate by suggesting that what is otherwise too vaguely defined must be “willfully” committed.

In the early law an undesired event attributable to a particular person was punished regardless of the state of mind of the actor. The rational development of criminal liability added a mental requirement for criminal culpability except in a limited class of cases not here relevant. (See *United States v. Balint*, 258 U. S. 250.) That requisite mental ingredient is expressed in various forms in criminal statutes, of which the word “willfully” is one of the most common. When a criminal statute prohibits something from being “willfully” done, “willfully” never defines the physical conduct or the result the bringing of which to pass is proscribed. “Willfully” merely adds a certain state of mind as a prerequisite to criminal responsibility for the otherwise proscribed act. If a statute does not satisfy the due-process requirement of giving decent advance notice of what it is which, if happening, will be visited with punishment, so that men may presumably have an opportunity to avoid the happening, (see *International Harvester Co. v. Kentucky*, 234 U. S. 216; *Collins v. Kentucky*, 234 U. S. 634; *United States v. Cohen Grocery Co.*, 255 U. S. 81; ~~*Connell v. General Const. Co.*, 260 U. S. 385~~), then “willfully” bringing to pass such an undefined and too uncertain event cannot make it sufficiently definite and ascertainable. “Willfully” doing something that is forbidden, when that something is not sufficiently defined according to the general conceptions of requisite certainty in our criminal law, is not rendered sufficiently definite by that unknowable having been done “willfully”. It is true also of a statute that it cannot lift itself up by its bootstraps.

Certainly these considerations of vagueness imply unconstitutionality of the Act at least until 1909. For it was not until 1909 that the word “willfully” was introduced. But the legislative history of that addition affords no evidence whatever that anybody thought that “willfully” was added to save the statute from unconstitutionality. The Joint Committee of Congress on the

Blane v. Frink Dairy Co., 274 U.S. 445

Revision of Laws (which sponsored what became the Criminal Code) gives no such indication, for it did not propose "willfully"; the reports in neither House of Congress shed any light on the subject, for the bill in neither House proposed that "willfully" be added; no speech by anyone in charge of the bill in either House sheds any light on the subject; the report of the Conference Committee, from which "willfully" for the first time emerges, gives no explanation whatever; and the only reference we have is that to which the Court's opinion refers (43 Cong. Rec., p. 3559). And that is an unilluminating remark by Senator Daniel of Virginia, who had no responsibility for the measure and who made the remark in the course of an exchange with Senator Heyburn of Idaho, who *was* in charge of the measure and who complained of an alleged attitude on the part of Southern members to filibuster against the bill because of the retention of Reconstruction legislation.

All this bears not merely on the significance of "willfully" in a presumably otherwise unconstitutionally vague statute. It also bears on the fact that, for the purpose of constitutionality, we are dealing not with an old statute that goes back to the Reconstruction days, but only to 1909.

Nor can support be found in the opinions of this Court for the proposition that "willfully" can make definite prohibitions otherwise indefinite.

In *Omachevarria v. Idaho*, 246 U. S. 343, the Court sustained an Idaho statute prohibiting any person having charge of sheep from allowing them to graze "upon any range usually occupied by any cattle grower". The statute was attacked under the Due Process Clause in that it failed to provide for the ascertainment of the boundaries of a "range" or for determining what length of time is necessary to constitute a prior occupation a "usual" one within the meaning of the Act. This attack upon the Idaho statute was rejected and for the following reasons:

"Men familiar with range conditions and desirous of observing the law will have little difficulty in determining what is prohibited by it. Similar expressions are common in the criminal statutes of other [grazing] states. This statute presents no greater uncertainty or difficulty in application to necessarily varying facts than has been repeatedly sanctioned by this court." 246 U. S. at 348.

Certainly there is no comparison between a statute embodying the concept of a western range and a statute outlawing the whole

range of constitutional rights, unascertained if not unascertainable.

To be sure, the opinion of Mr. Justice Brandeis also brought to its support § 6314 of Revised Codes of Idaho which provided that "In every crime or public offense there must exist a union, or joint operation, of act and intent, or criminal negligence." But this is merely an Idaho phrasing of the conventional law in text books and decisions dealing with criminal law that there must be a *mens rea* for every offense. In other words, a guilty state of mind is usually required before one can be punished for an outlawed act. But the definition of the outlawed act is not derived from the state of mind with which it must be committed. All that Mr. Justice Brandeis meant by "indefiniteness" in the context of this statute was the claim that the statute did not give enough notice as to the act which was outlawed. But notice was given by the common knowledge of what a "range" was, and for good measure he suggested that under the Act a man would have to know that he was grazing sheep where he had no business to graze them. There is no analogy between the face of this Idaho statute and the face of our statute. The essential difference is that in the Idaho statute the outlawed act was defined; in § 20 it is undefined.

In *High Grade Provision Co. v. Sherman*, 266 U. S. 497, New York punished the misrepresentation of meat as "kosher" or as satisfying "orthodox Hebrew religious requirements". Here, too, the objection of indefiniteness was rejected by this Court. The objection bordered on the frivolous. In this case, too, the opinion of the Court, as is the way of opinions, softened the blow by saying that there was no danger of anyone being convicted for not knowing what he was doing, for it required him to have consciousness that he was offering meat as "kosher" mean when he knew very well that it was not.

Thus in both these cases this Court was saying that the criminal statutes under scrutiny, although very specific, did not expose any innocent person to the hazards of unfair conviction, because not merely did the legislation outlaw specifically defined conduct, but guilty knowledge of such defined criminality was also required. It thereby took the legislation outside the scope of *United States v. Baint*, 258 U. S. 220, in which the Court sustained the prosecution of one wholly innocent of knowledge of the act, commission of which the statute explicitly forbade.

This case does not involve denying adequate power to Congress. There is no difficulty in passing effective legislation for the protection of civil rights against improper State action. What we are concerned with here is something basic in a democratic society, namely, the avoidance of the injustice of prohibiting conduct in terms so vague as to make the understanding of what is proscribed a guess-work too difficult for confident judgment even for the judges of the highest Court in the land.

III.

By holding, in this case, that State officials who violate State law nevertheless act "under color of" State law, and by establishing as federal crimes violations of the vast, undisclosed range of the Fourteenth Amendment, this Court now creates new delicate and complicated problems for the enforcement of the criminal law. The answers given to these problems, in view of the tremendous scope of potential offenses against the Fourteenth Amendment, are bound to produce a confusion detrimental to the administration of criminal justice.

The Government recognizes that "this is the first case brought before this Court in which Section 20 has been applied to deprivations of rights secured by the Fourteenth Amendment." It is not denied that the Government's contention would make a potential offender against this act of any State official who as a judge admitted a confession of crime, or who as judge of a State court of last resort sustained admission of a confession, which we should later hold constitutionally inadmissible, or who as a public service commissioner issued a regulatory order, which we should later hold denied due process or who as a municipal officer stopped any conduct we later should hold to be constitutionally protected. The Due Process Clause of the Fourteenth Amendment has a content the scope of which this Court determines only as cases come here from time to time and then not without close division and reversals of position. Such a dubious construction of a criminal statute should not be made unless language compels.

That such a pliable instrument of prosecution is to be feared appears to be recognized by the Government. It urges three safeguards against abuse of the broad powers of prosecution for which it contends. (1) Congress, it says, will supervise the Department's policies and curb excesses by withdrawal of funds. It surely is casting an impossible burden upon Congress to expect it

to police the propriety of prosecutions by the Department of Justice. Nor would such detailed oversight by Congress make for the effective administration of the criminal law. (2) The Government further urges that, since prosecutions must be brought in the district where the crime was committed, the judge and jurors of that locality can be depended upon to protect against federal interference with State law enforcement. Such a suggestion would, for practical purposes, transfer the functions of this Court, which adjudicates questions concerning the proper relationship between the federal and State governments, to jurors whose function is to resolve factual questions. Moreover, if federal and State prosecutions are subject to the same influences, it is difficult to see what need there is for taking the prosecution out of the hands of the State. After all, Georgia citizens sitting as a federal grand jury indicted and other Georgia citizens sitting as a federal trial jury convicted Screws and his associates; and it was a Georgia judge who charged more strongly against them than this Court thinks he should have.

Finally, the Department of Justice gives us this assurance of its moderation:

"(3) The Department of Justice has established a policy of strict self-limitation with regard to prosecutions under the civil rights acts. When violations of such statutes are reported, the Department requires that efforts be made to encourage state officials to take appropriate action under state law. To assure consistent observance of this policy in the enforcement of the civil rights statutes, all United States Attorneys have been instructed to submit cases to the Department for approval before prosecutions or investigations are instituted. The number of prosecutions which have been brought under the civil rights statutes is small. No statistics are available with respect to the number of prosecutions prior to 1939, when a special Civil Rights Section was established in the Department of Justice. Only two cases during this period have been reported: *United States v. Buntin*, 10 Fed. 730 (C. C. S. D. Ohio), and *United States v. Stone*, 158 Fed. 836 (D. Md.). Since 1939, the number of complaints received annually by the Civil Rights Section has ranged from 2000 to 11,000, but in no year have prosecutions under both Sections 20 and 19, its companion statute, exceeded 76. In the fiscal year 1943, for example, 31 full investigations of alleged violations of Section 20 were conducted, and three cases were brought to trial. In the following fiscal year there were 55 such investigations, and prosecutions were instituted in 12 cases.

"Complaints of violations are often submitted to the Department by local law enforcement officials who for one reason or another may feel themselves powerless to take action under state law. It is primarily in this area, namely, where the official position of the wrongdoers has apparently rendered the State unable or unwilling to institute proceedings, that the statute has come into operation. Thus, in the case at bar, the Solicitor General of the Albany Circuit in the State of Georgia, which included Baker County, testified (R. 42): 'There has been no complaint filed with me in connection with the death of Bobby Hall against Sheriff Screws, Jones, and Kelley. As to whom I depend for investigation of matters that come into my Court, I am an attorney, I am not a detective and I depend on evidence that is available after I come to Court or get into the case The sheriffs and other peace officers of the community generally get the evidence and I act as the attorney for the state. I rely on my sheriffs and policemen and peace officers and private citizens also who prosecute each other to investigate the charges that are lodged in Court.'"

But such a "policy of strict self-limitation" is not accompanied by assurance of permanent tenure and immortality of those who make it the policy. Evil men are rarely given power; they take it over from better men to whom it had been entrusted. There can be no doubt that this shapeless and all-embracing statute can serve as a dangerous instrument of political intimidation and coercion in the hands of those so inclined.

We are told local authorities cannot be relied upon for courageous and prompt action, that often they have personal or political reasons for refusing to prosecute. If it be significantly true that crimes against local law cannot be locally prosecuted, it is an ominous sign indeed. In any event, the cure is a re-invigoration of State responsibility. It is not an undue incursion of remote federal authority into local duties with consequent debilitation of local responsibility.

The complicated and subtle problems for law enforcement raised by the Court's decision emphasize the conclusion that § 20 was never designed for the use to which it has now been fashioned. The Government admits that it is appropriate to leave the punishment of such crimes as this to local authorities. Regard for this wisdom in federal-State relations was not left by Congress to executive discretion. It is, we are convinced, embodied in the statute itself.

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